Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-695

BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI: MEMBERS OF THE BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI, Individually and in Their Official Capacities, et al.,
Petitioners,

vs.

CHARLOTTE HOROWITZ,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

JACKSON A. WRIGHT
MARVIN E. WRIGHT
JAMES S. NEWBERRY
TED D. AYRES
University of Missouri
227 University Hall
Columbia, Missouri 65201

FRED WILKINS
SHUGHART, THOMSON & KILROY
9th Floor, Commerce Bank Building
Kansas City, Missouri 64106
Attorneys for Petitioners

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

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To the United States Court of Appeals for the Eighth Circuit

To: The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Petitioners herein pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, said judgment being entered July 16, 1976.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported in 538 F. 2d 1317 (1976), and is set out in the appendix, infra P. A-1. The order of the United

States Court of Appeals for the Eighth Circuit denying Petitioners' petition for rehearing or hearing by court en banc, including the dissent thereto, entered on the 2nd day of September, 1976, is set out in the appendix, infra A-9. The opinion of the United States District Court for the Western District of Missouri is not reported, the opinion is set out in the appendix, infra, P A-12.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on July 16, 1976. The petition for rehearing or hearing en banc was denied on September 2, 1976. The jurisdiction of this court rests on 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED FOR REVIEW

1. Is a medical student in a public institution of higher education entitled, pursuant to the Constitution of the United States and the Fourteenth Amendment thereto, to a notice of charges and a hearing prior to dismissal from medical school for deficiency in academic performance?

2. Does the dismissal without a formal hearing of a medical student from a public institution of higher education for deficiency in academic performance impose such a stigma or disability upon the student as to amount to a deprivation of liberty under the Fourteenth Amendment, when the student has prior notice and knowledge of the deficiency and the subsequent dismissal and reasons therefor were not made public?

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

This case involves the due process clause of the Fourteenth Amendment to the United States Constitution, said due process clause stating ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; . . .".

STATEMENT OF THE CASE

The School of Medicine of the University of Missouri-Kansas City has as a primary goal that of educating and graduating medical students who are safe physicians with the capability of rendering primary care to the general public. (Memorandum and Opinion, App. p. A-12, Stip. III 81; Def. Exhibit 1, 2; T. 90, 148-152, 370-375)[1]

Respondent (Plaintiff in the Federal District Court, Appellant in the Eighth Circuit Court of Appeals) was admitted as a student with advanced standing at the University of Missouri-Kansas City School of Medicine for the academic year beginning in August, 1971 (Stip. III, 22). In March, 1972, some seven months after being admitted to the School, Respondent was notified by her docent (supervising physician and teacher) that Respondent's performance in pediatrics was deficient in that her rapport with patients and her expertise in coming to the funda-

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[1] Memorandum and Opinion refers to Federal District Court Order and Memorandum set forth in the Appendix.

Stipulation refers to Stipulations of the parties filed in Federal District Court.

Defendants' exhibits refers to petitioners' exhibits introduced in Federal District Court.

T. refers to official transcript of Federal District Court trial Proceedings filed in Court of Appeals.

mentals of the clinical problem were below those of her peer group, that she was erratic in her attendance in the pediatric clinic and that several physicians were disturbed because of Respondent's lack of personal hygiene (Stip. III 34: T. 107-108, 229).

On July 5, 1972 following a review by the Council on Evaluation of the School of Medicine (the body charged with the responsibility for the review of the academic evaluation of student performance) and the confirmation of the action by the Coordinating Committee of the School of Medicine (the body charged with review power over decisions and or recommendations of the Council on Evaluation), the Dean of the School of Medicine notified Respondent in writing that she was placed on probation and that her performance in the School of Medicine was deficient, said notification specifying the deficiencies. The Dean of the School of Medicine explained and discussed with Respondent each point mentioned in the notification of deficiencies (Stip. III 45; T. 235, 386-387; Def. Ex. 8).

On December 26, 1972 the Council on Evaluation, following a review of Respondent's academic performance, recommended that Respondent be continued on probation and that Respondent not be considered as a candidate for the M.D. degree in June, 1973 (Stip. III 54, 55, 56). The recommendation was approved by the Coordinating Committee of the School of Medicine and in January, 1973 Respondent was orally advised by her docent, the Chairman of the Council on Evaluation, and the Dean of the School of Medicine of her specific performance deficiencies, all of which were confirmed by written communication to Respondent on February 7, 1973 (Stip. III 57, 58; Def. ex. 9). The written communication to Respondent provided in part:

> ". . . and you must make very marked and very substantial improvement in several areas. These are: clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism.
>
> This means that these very substantial and marked improvements must take place and be satisfactory to the Council on Evaluation or you will not be able to continue in the Medical School after May of this year."

Pursuant to Respondent's request to appeal the decision of non-graduation, the Dean of the School of Medicine established a procedure for the Respondent to undergo oral and practical examinations by seven experienced physicians, none of whom had had appreciable contact with Respondent during her attendance at the School of Medicine (Stip. III 59). The question presented to the seven examining physicians was that of whether or not Respondent was deemed qualified and competent to graduate in June of 1973 (Stip. III 60, 61; Def. ex. 22; T. 50 51). Upon receiving individual reports from the seven physicians (a minimum of five stating Respondent not qualified for graduation in June, 1973) (Def. exs. 15-21; Memorandum and Opinion App. p. A-12) the Council on Evaluation reaffirmed its earlier recommendation that Respondent not gradute in June, 1973, which recommendation was confirmed by the Coordinating Committee and approved by the Dean of the School of Medicine (Stip. III 71, 74; Def. ex. 12).

The Council on Evaluation reviewed the performance evaluations of Respondent for the period of time from December, 1972 through the date of the meetings of the Council on Evaluation (May 14, 1973 and May 28, 1973) to determine whether or not there had been a marked improvement in the performance of Respondent as called for in the previous written notification to Respondent. The Council on Evaluation recommended that Respondent, because of deficient performance and lack of improvement therein, be dropped from the School of Medicine (T. 463; Stip. III 73). The recommendation was confirmed by the Coordinating Committee, (Stip. III 77) the Dean of the

School of Medicine, and the Provost for Health Sciences (Stip. III 78).

Petitioners did not at any time communicate or reveal to any individual, group or organization outside the University of Missouri any information concerning Respondent's Medical School performance deficiencies, her non-graduation, her dismissal, or the reasons therefor. None of the information was ever made public.

Respondent initiated this action in the United States District Court for the Western District of Missouri under 42 U.S.C. 1983 and alleged a denial of rights guaranteed by the Constitution and laws of the United States by the failure of Petitioners to graduate Respondent; a deprivation of due process in that the School failed to provide Respondent with a notice of charges and hearing on the issue of evaluation of academic performance; a denial of equal protection in that evaluation of Respondent's academic performance was carried out in a manner that caused Respondent to be disadvantaged by reason of sex, religion and physical appearance; that the decision to not graduate Respondent was arbitrary, capricious, unreasonable and that Petitioners did not follow their own rules in granting Respondent an appeal to the panel of seven physicians. Relief sought by Respondent included declaratory and injunctive relief seeking to enjoin the dismissal of Respondent from Medical School; in the alternative to order reinstatement of Respondent in good standing; alternatively to graduate Respondent and to award compensatory damages and exemplary punitive damages.

On November 14, 1975, after a two day trial before the Court, judgment was entered for Petitioners as to all claims asserted by Respondent including that Petitioners had afforded Respondent procedural due process in that the School went beyond the requirements of procedural due process by affording Respondent

the opportunity to be examined by seven independent physicians in order to be absolutely certain that their grading of the Respondent in her medical skills was correct. The trial court specifically found that Respondent was repeatedly cautioned of her deficient performance and that her docent had gone to great lengths and extremes in his efforts to assist Respondent in every phase of her education and that he repeatedly called to her attention deficiencies noted by the school authorities (Memorandum and Opinion App. A-12).

By opinion dated July 16, 1976 the United States Court of Appeals for the Eighth Circuit reversed outright the judgment of the trial court and found that the Fourteenth Amendment to the Constitution of the United States required a notice of charges and hearing before a medical student could be dismissed from medical school for academic performance deficiencies (App. A-1).

Petitioners' request for a rehearing or hearing en banc was denied by a five to three vote of the United States Court of Appeals for the Eighth Circuit on September 2, 1976 with a written dissent being made a part of that order (App. A-9).

REASONS FOR GRANTING THE WRIT OF CERTIORARI

The United States Court of Appeals for the Eighth Circuit, in reversing the United States District Court for the Western District of Missouri, in the case at bar is the first court to hold that the due process clause of the Fourteenth Amendment to the Constitution of the United States requires a public institution of higher education to give a medical student a notice of charges and hearing (and accorded all other procedural due process rights) before the student can be dismissed for deficiencies in academic performance. The Court held that such a dismissal imposed a stigma upon the student and thus deprived the student of liberty within the meaning and intent of the due process clause of the Fourteenth Amendment to the Constitution of the United States. The court placed total reliance for legal authority upon the decisions rendered by the Supreme Court of the United States in the cases of *Board of Regents v. Roth*, 408 U.S. 564 (1972) and *Perry v. Sindermann*, 408 U.S. 593 (1972) and upon its own decision in the case of *Greenhill v. Bailey*, 519 F.2d 5 (8th Circuit, 1975).

It is respectfully submitted that the opinion of the United States Court of Appeals for the Eighth Circuit in the case at bar is in direct conflict with the decision of the United States Supreme Court in the cases of *Bishop v. Wood*, 96 S.Ct. 2074 (1976) and *Board of Regents v. Roth*, supra. It is further submitted that the opinion in the case at bar is in conflict with holdings of other United States Circuit Courts of Appeal and in conflict with opinions rendered by several United States District Courts.

In the *Roth* decision, supra, the Supreme Court establishes that for there to be a deprivation of liberty there must be a charge that will seriously damage one's standing and associations in his community; that one is guilty of dishonesty or immorality; or

where one's good name, reputation, honor or integrity is at stake because of what the government is doing to the individual. As stated by the Supreme Court in *Roth*, supra, at 575, note 13;

> "Mere proof, for example, that his record of nonretention in one job, taken alone, might make him somewhat less attractive to some other employer would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of 'liberty'."

It is submitted that the dismissal of a student for the pure and simple reason of deficient academic performance from a professional school does not arise to the level of being considered a deprivation of liberty.

The Supreme Court of the United States followed *Roth*, supra, in its recent decision in *Bishop v. Wood*, supra, wherein it held that a public employee was not deprived of liberty when he was terminated from public employment without a notice of charges and a hearing. As in the *Bishop* case, the Petitioners in the case at bar did not make a public disclosure to any individual, group, organization, or association, the dismissal of Respondent from Medical School or the reasons therefor. A medical student, particularly where the trial judge had found that the sole reason for dismissal was deficient academic performance, does not have greater "liberty" rights than a public employee. The nature of a student's interest is certainly no greater than the nature of the interests of a public employee. If a public employee is not constitutionally entitled to refute a city manager's judgment at a hearing, then a medical student should not be deemed entitled to the right to refute a medical school's academic judgment and evaluation at a hearing.

It is submitted that there is disagreement among the judges of the Eighth Circuit Court of Appeals upon the legal principles involved, the meaning and intent of the Supreme Court of the United States in its decisions of *Board of Regents v. Roth*,

supra, and *Bishop v. Wood*, supra. This disagreement is shown by the dissent written by the Chief Judge, joined by two other judges, in the order denying Petitioner's motion for rehearing or hearing en banc, appendix P. A-9. This dissent shows that there is even disagreement as to the meaning and intent of the court's earlier decision in *Greenhill v. Bailey*, supra, and it is interesting to note that the author of the *Greenhill* decision joined in the dissent to the court's order in the case at bar.

The decision of the Eighth Circuit Court of Appeals in the case at bar is in conflict with the decisions of other circuit courts of appeal, specifically *Mahavongsana v. Hall*, 529 F.2d 488 (5th Circuit, 1976), and *Gaspar v. Bruton*, 513 F.2d 843 (10th Circuit, 1975). Prior to the decision in the case at bar, the most far reaching decision on the question of constitutional retraints on the public institution is that of *Gaspar v. Bruton*, supra. In that case the court held at page 851:

> ". . ., in order to satisfy Due Process prior to termination or suspension of a student for deficiencies in meeting minimum academic performance need only advise that student with respect to such deficiencies in any form. All that is required is that the student be made aware prior to termination of his failure or impending failure to meet those standards."

In the case at bar the court in its opinion referred to communications to the Respondent which pointed out her deficiencies, thus there is no question but what Respondent knew of the deficiencies for at least one year prior to her dismissal. Thus, the facts show that Petitioners had complied with even the more stringent requirements of the Tenth Circuit Court of Appeals.

The opinion of the Eighth Circuit Court of Appeals in the case at bar is in direct conflict with United States District Court opinions in *Connelly v. University of Vermont*, 244 F. Supp. 156 (D. Vt. 1965), *Depperman v. University of Kentucky*,

371 F. Supp. 73 (E.D. Ky. 1974) and *Keys v. Sawyer*, 353 F. Supp. 936 (S.D. Tex. 1973). These United States District Court opinions have heretofore been the guiding light for public institutions of higher education on the issue here involved.

Prior to the decision of the Eighth Circuit Court of Appeals the courts had not injected themselves into the realm of academic evaluation of students, but had left such evaluations and determinations to professional educators who have the expertise and knowledge to evaluate a student's academic performance. In the *Greenhill* decision, supra, at page 9 the Eighth Circuit in not requiring the school to have a hearing on the student's academic performance or evaluation stated:

> "A graduate or professional school is, after all, the best judge of its student's academic performance and their ability to master the required curriculum."

The present opinion in the case at bar is a drastic change in the law applied to higher education and presents far reaching implications. As stated by Chief Judge Gibson of the Eighth Circuit Court of Appeals:

> "My main concern with this decision is that it impermissively injects the courts into the academic environment of colleges and professional schools to an unacceptable degree. Educational institutions are much more qualified and better positioned to promulgate and enforce procedures which regulate academic performance. Dismissals due to academic deficiencies are not uncommon and schools may be expected to review the files of a number of students during the course of an academic year to determine whether expulsion is warranted. The present case seems to require the schools to give all such students formal notification of their deficiencies and an opportunity to respond before dismissal, regardless of how egregious the deficiency might be. Such a rule is likely to foment future litigation and subject educational institutions to unnecessary monitoring

and to possible monetary judgments. This decision is not, in my opinion, in accord with existing principles of constitutional law and fails to give sufficient deference to the perspective and unique position of school administrators."

CONCLUSION

It is respectfully requested that the Supreme Court grant certiorari in this case.

Respectfully submitted,

JACKSON A. WRIGHT

MARVIN E. WRIGHT

JAMES S. NEWBERRY

TED D. AYRES
University of Missouri
227 University Hall
Columbia, Missouri 65201

FRED WILKINS
SHUGHART, THOMSON & KILROY
9th Floor
Commerce Bank Building
Kansas City, Missouri 64106

Attorneys for Petitioners

APPENDIX

United States Court of Appeals
For the Eighth Circuit

No. 75-1949

Charlotte Horowitz, Appellant, v. Board of Curators of the University of Missouri, et al., Appellees.	Appeal from the United States District Court for the Western District of Missouri.

Submitted: June 15, 1976

Filed: July 16, 1976

Before HEANEY, ROSS and STEPHENSON, Circuit Judges.

ROSS, Circuit Judge.

Charlotte Horowitz has brought this action under 42 U.S.C. § 1983 challenging her dismissal from the University of Missouri-Kansas City (UMKC) School of Medicine in July 1973. The defendants are the governing body of the institution and certain officials of the medical school. The case was tried without a jury and judgment was for the defendants, from which Horowitz now appeals. We reverse the district court judgment.

The facts are not seriously in dispute. The UMKC Medical School admitted its first students in August 1971; Horowitz was admitted at that time as an advanced standing student. She has a Bachelor's degree in chemistry from Barnard College and a Master's in psychology from Columbia University. She studied pharmacology at Duke for one year, taking the same curriculum as the first year medical students there. She began as a sopho-

more at the Women's Medical College of Pennsylvania but withdrew in good standing because of illness her first semester. She also did graduate study and worked in the field of psychopharmacology at the National Institute of Health in Bethesda, Maryland for five years. She scored above the 99th percentile on the Graduate Record Examination in Verbal Aptitude, Quantitative Aptitude, Advanced Psychology and Advanced Chemistry. Her scores on the Medical College Admissions Test were also extremely high, with scores in the 99th percentile in the General Information and Science categories. She received excellent recommendations from those with whom she had worked at the National Institute of Health and educators.

The UMKC Medical School's curriculum is intended to educate its students to become competent practicing physicians. Therefore, the school considers that a student must become proficient in clinical skills in order to earn an M.D. degree. Both Horowitz and the University knew at the time of her entrance, however, that she intended to become a psychiatrist and teach or do research.

The policies and regulations of the school do not state the requirements of graduation in terms of a certain number of courses which must be completed. During the last two years of medical education at UMKC a student is required to pursue studies in rotational units which deal with various areas of medicine: e.g. Pathology-Anatomy, Psychiatry, Obstetrics-Gynecology. These units generally included clinical responsibilities as well as academic study. Horowitz received credit for all these rotations except Emergency Room, her last rotation, which was not completed until after it was determined she would not graduate.[1] Her academic (as opposed to practical) performance cer-

[1] The University draws a distinction between receiving credit and satisfactorily completing a course, and contends that Horowitz did not satisfactorily complete courses besides Emergency Room. It does not appear that this distinction was communicated to Horowitz or the other students, however.

tainly gave no cause for complaint. She scored first in the school on Part I of the National Board Examination for medical students and second on Part II. She ranked fourth in her class in quarterly exams in February 1973, and second in the May 1973 exams. In the latter examination she was either first or second in 14 of the 30 categories.

Although she received credit in all rotational units except Emergency Room and her docent, the faculty member who had the closest contact with her, regarded her performance as outstanding throughout her first year,[2] other faculty members felt her clinical performance was deficient. This first came to light in the spring of 1972 when faculty members in the Pediatrics course criticized her lack of patient rapport and "expertise in coming to the fundamentals of the clinical problem," erratic attendance, and poor personal hygiene. These criticisms were brought to Horowitz's attention by her docent, although she was not shown her formal course evaluations.

Toward the end of her first year at the school, Horowitz's record was reviewed by the Council on Evaluation, a body of students and faculty which recommended to the Dean that she not be advanced to Year VI, the final year of the medical school. However, in a letter dated July 5, 1972, which confirmed an earlier conversation, the Dean told Horowitz that she was being advanced to Year VI, but was on probation. The letter pointed out her deficiencies as follows:

> Your acquisition of information is good. Your relationship with others has not been good and represents a major

[2] The docent's role was compared by UMKC to that of an ombudsman. During a student's academic career he or she would have more frequent and closer contact with the docent than any other faculty member. Horowitz's docent testified that he would have recommended that she be allowed to graduate in the Spring of 1973, and be given a residency, and in fact he had so recommended in June 1972.

deficiency. You need to improve your relationship with others rapidly and substantially. This involves keeping to established schedules; meeting all clinical responsibilities on time and gracefully; attending carefully to personal appearance, including hand washing and grooming; participating appropriately in the activities of the School; and directing criticisms and suggestions maturely to your Docent and to the faculty member who is in charge of a curriculum block as you may have criticisms and suggestions.

The letter also stated that noncompliance with certain standards of conduct "is incompatible with continued progress and graduation." After she was placed on probation, Horowitz was counseled frequently by her docent, the Dean and other faculty members until her ultimate dismissal.

In November of 1972 the University's Provost for the Health Sciences promulgated changes in the procedures for deciding questions of students' academic standing. The Council on Evaluation thereafter made recommendations to the Coordinating Committee, which consisted of faculty members. The Coordinating Committee had veto power over the Council's recommendations, and the Dean had veto power over recommendations of the Coordinating Committee. Provision was made for students' personal appearances before the Council upon its request if that body felt it had inadequate information. It was also provided that a student could be given additional practical and oral examinations if the Council needed to resolve questions of competence as a physician. On December 26, 1972, the Council on Evaluation reconsidered Horowitz's status and recommended that she not be allowed to graduate on schedule in June 1973. This recommendation was accepted by the Coordinating Committee. The Dean approved this recommendation and on February 7, 1973, he wrote a letter to Horowitz reviewing a conference with her, held January 26. The Dean's letter stated that she had not made sufficient progress as outlined in the

July 5 letter and was being continued on probation. She was informed that she would not be able to graduate as scheduled and that she would have to improve markedly in the areas of clinical competence, peer and patient relations, personal hygiene and ability to accept criticism. If she did not make the improvement considered necessary by the Council on Evaluation, she would not be able to continue at the medical school after May. She was told that she could request a set of oral and practical examinations as an "appeal" of the decision not to graduate her in the spring of 1973. Horowitz initiated such a request.

Since no such proceeding had ever been requested and no procedures had been set up, the school had to create a procedure to be followed in Horowitz's case. It was arranged that she would be examined by seven experienced physicians on the faculty, none of whom had appreciable previous contact with Horowitz. They would evaluate her clinical abilities in the areas of pediatrics, pathology and anatomy, general medicine, and obstetrics and gynecology. The Dean informed the seven physicians by letter and a meeting that they were to make one of three recommendations: a) graduation on schedule; b) continued probation and reassessment of her status in May 1973; c) dismissal from the medical school. The option of recommending additional study after May 1973 without dismissal was not given to them. A majority opinion of the seven doctors was to be determined and submitted to the Council on Evaluation. The examinations were conducted and the doctors submitted their reports. Two recommended that Horowitz graduate on schedule, two recommended that she continue on probation, and two recommended that she be dropped from school. One believed she was not qualified to graduate at that time, but expressed no further opinion. Although there was no clear majority opinion the panel was not called together as the procedures contemplated. Their written individual recommendations were submitted to the Council on Evaluation.

On May 1, 1973, after considering the panel's reports, the Council reaffirmed its opinion that Horowitz should not be allowed to graduate in June, and the Coordinating Committee accepted this recommendation. The Dean also approved, and on May 7 this decision was communicated to Ms. Horowitz. At that time she was told that a decision would be made soon on whether she would be allowed to remain in school. Horowitz wrote a letter to the Dean requesting that she be allowed to remain in school for a short time to correct her deficiencies, but this letter was not answered.

On May 28, 1973, the Council on Evaluation met again to reconsider Horowitz's status in light of her performance in courses taken that spring, and it was decided that she should be dropped from the school. On June 4 the Coordinating Committee accepted this recommendation and Horowitz was notified by the Dean that she was no longer in school on July 3. Horowitz sought reversal of this decision from the Provost for the Health Sciences, who denied her request.

Horowitz was never given a chance to appear before the Council on Evaluation, the Coordinating Committee or the Dean, for a hearing during the dismissal procedure, nor was she informed of the time or place of any of their meetings. Neither was she given copies of the formal evaluations or other evidence which the Council and the Committee considered.

The evidence reveals that Horowitz rejected suggestions by the medical school faculty that she alter her professional plans and seek a Ph.D. rather than a medical degree because a Ph.D. would not allow her to conduct the experimentation in psychopharmacology that was her goal. It was stipulated that she was offered employment at the University of North Carolina, conditional upon her obtaining the degree of Doctor of Medicine, and she testified that she had accepted that offer in November 1972. It was also uncontroverted that Horowitz's dismissal from medical school will make it difficult or impossible for her

to obtain employment in a medically related field or to enter another medical school.[3]

The district court, in holding for defendants, relied on "the immunity accorded [educational authorities] in academic matters . . .", absent a showing of bad faith or arbitrary and capricious action. We are cognizant that some decisions recognize a distinction between expulsions for misconduct and academic failure. *See, e.g., Brookins v. Bonnell*, 362 F.Supp. 379, 382 (E.D. Pa. 1973). We express no opinion on the validity of that distinction under other circumstances. However, our decision in *Greenhill v. Bailey*, 519 F.2d 5, 8-9 (8th Cir. 1975) acknowledges "that the dictates of due process, long recognized as applicable to disciplinary expulsions . . . may apply in other cases as well, where the particular circumstances meet the criteria articulated by the Supreme Court in *Board of Regents v. Roth*, [408 U.S. 564 (1972)], and *Perry v. Sindermann* [408 U.S. 593 (1972)]." In *Board of Regents v. Roth*,

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[3] Dr. Cohen, who had 30 years of experience in hiring M.D.'s, Ph.D.'s and others for medical research in various institutions testified:

> Yes, I would be very much concerned about an individual who was dismissed from a medical school, or, for that matter, from any graduate school. This to me is a very serious matter and I would have to look very carefully into that person's background, record and so forth. And if there were two individuals that, say, that person or someone else were applying and otherwise would have equal qualifications, roughly, I would lean heavily to the other person who was not dismissed from a graduate school.
>
> * * * * * * *
>
> Yes, I think it would be a significant black mark against that person's name, I think it would stigmatize that individual, I think that person would probably be—well, would have great difficulty to get into another medical school, if at all.

Transcript at 25-26. We note that UMKC's own application forms require that a student fully explain the reasons they were required to leave "any college, graduate or professional school . . . because of deficiencies in either conduct or scholarship." Plaintiff's Exhibit 10. We believe the evidence in this case makes it factually distinguishable from those in which a damaging stigma was not proved or was inadequately alleged. *E.g. Bishop v. Wood*, No. 74-1003 (U.S., June 10, 1976); *Board of Regents v. Roth*, 408 U.S. 564, 573-574 (1972).

supra, 408 U.S. at 573, the Court recognized that action of the state which "imposed . . . a stigma or other disability that foreclosed . . . freedom to take advantage of other employment opportunities" was a deprivation of liberty which could not be accomplished without notice and a hearing. In *Greenhill, supra*, 519 F.2d at 8, we found such stigmatization where a medical student's expulsion for academic failure on the basis of lack of intellectual ability or inadequate preparation effectively foreclosed him from pursuing a medical education, because of the inherent suggestion that he was unfit to study medicine.

The unrefuted evidence here establishes that Horowitz has been stigmatized by her dismissal in such a way that she will be unable to continue her medical education, and her chances of returning to employment in a medically related field are severely damaged. The dismissal was effected without the hearing required by the fourteenth amendment.[4]

We reverse and remand to the district court with instructions to order defendants to provide Horowitz with a hearing before the decision making body or bodies, at which she shall have an opportunity to rebut the evidence being relied upon for her dismissal and accorded all other procedural due process rights.[5]

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

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[4] The parties agree that the appeal procedure, involving tests administered by the panel of seven doctors, related only to the decision not to graduate Horowitz, and not to the decision to expel her. Nevertheless, we doubt that this procedure would satisfy the requirement of due process, since the panel itself was only an examiniig board without any power except the power to make recommendations to another body which also had only that same power.

[5] Because of our disposition of this case we do not reach the substantive due process ground advanced by Horowitz.

United States Court of Appeals
For the Eighth Circuit

No. 75-1949

Charlotte Horowitz, Appellant, v. Board of Curators of the University of Missouri, et al., Appellees.	Appeal from the United States District Court for the Western District of Missouri

Filed: September 2, 1976

ORDER DENYING PETITION FOR REHEARING EN BANC

The petition for rehearing en banc is denied by a vote of 5 to 3. Chief Judge Gibson, joined by Judges Webster and Henley, would grant the rehearing en banc for the following reasons.

My main concern with this decision is that it impermissively injects the courts into the academic environment of colleges and professional schools to an unacceptable degree. Educational institutions are much more qualified and better positioned to promulgate and enforce procedures which regulate academic performance. Dismissals due to academic deficiencies are not uncommon and schools may be expected to review the files of a number of students during the course of an academic year to determine whether expulsion is warranted. The present case seems to require the schools to give all such students formal notification of their deficiencies and an opportunity to respond before dismissal, regardless of how egregious the deficiency

might be. Such a rule is likely to foment future litigation and subject educational institutions to unnecessary monitoring and to possible monetary judgments. This decision is not, in my opinion, in accord with existing principles of constitutional law and fails to give sufficient deference to the perspective and unique position of school administrators.

The dismissal of Horowitz from the U.M.K.C. School of Medicine did not implicate any liberty interest which would mandate the invocation of procedural due process guarantees. The dismissal did not stigmatize Horowitz in a constitutional sense. The Supreme Court recently ruled that an individual's good name, reputation or integrity is not impaired when he is dismissed from employment for false reasons unless there has been a public disclosure of the reasons for discharge. *Bishop v. Wood*, 44 U.S. L.W. 4820, 4822 (U.S. June 10, 1976). Absent such public disclosure, there is no deprivation of a liberty interest. In the present case, the reasons for Horowitz's dismissal were not released to the public but were communicated to her directly by school officials.

Greenhill v. Bailey, 519 F.2d 5 (8th Cir. 1975), is factually distinguishable from the present case and, thus, not controlling. In *Greenhill*, the student was dismissed because he allegedly lacked the intellectual ability to continue in medical school. This denigrating information was disseminated outside of the medical school by school officials when notification of the student's dismissal was forwarded to the Liaison Committee of the Association of American Medical Colleges. No such public disclosure took place in this case. In the *Greenhill* opinion, the court noted that the school's action disparaged only plaintiff's intellectual capacity as opposed to his performance in school. Here, it was Horowitz's deficient performance in the clinical program which provided the sole basis for her dismissal; there was no reference to her intellectual abilities.

Even if due process rights were involved in this case, I believe Horowitz received all the process that was called for under the circumstances. She was informed several times of her inadequacies in the clinical program. She was counseled by the Dean and faculty members. She submitted to a series of oral and practical examinations before a panel of seven doctors and only two doctors were of the opinion that she was qualified to graduate on schedule. Her deficiencies remained uncorrected and she was dismissed from school. Horowitz clearly was given sufficient notice of her weaknesses and she was informed that dismissal might result if corrective measures were not successfully pursued. This notice and the opportunity over the course of a year to correct her deficiencies were sufficient for due process purposes.

Unless it can be shown that a student's dismissal was actually motivated by a desire to limit the student's constitutionally protected rights, *see Bishop v. Wood*, 44 U.S.L.W. at 4823, courts should stay their hands and permit schools to pursue their institutional policies without judicial interference.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

In the United States District Court for the
Western District of Missouri
Western Division

Civil Action No. 74CV47-W-3

Charlotte M. Horowitz,
Plaintiff,

vs.

The Curators of the University of Missouri
University of Missouri, Columbia, Missouri,

William H. Billings, Irvin Fane, Pleasant R. Smith, William C. Myers, Jr., Mrs. William C. Tucker, John Sam Williamson, Robert G. Brady, Theodore D. McNeal, G. Fred Kling, Jr. [members of the Board of Curators of the University of Missouri, individually and in their official capacities.]

Richardson K. Noback, M.D., Dean of School of Medicine, University of Missouri-Kansas City, Kansas City, Missouri
E. Grey Dimond, M.D., Provost-Health Sciences, University of Missouri-Kansas City, Kansas City, Missouri

and

ALL other persons succeeding to or acting in the offices or official capacities of the above-named, and their agents, subordinates, and employees,
Defendants.

Juergens,* Senior Judge

MEMORANDUM AND ORDER

(Filed November 14, 1975)

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* United States Senior District Judge William G. Juergens of the Eastern District of Illinois is sitting by assignment.

This civil rights action was tried to the Court without a jury on July 16 and 17, 1975.

The complaint alleges that:

> Jurisdiction exists under the provisions of the Civil Rights Act, 42 U.S.C. 1983 and 28 U.S.C. 2201, and seeks declaratory judgment, damages, injunctive and other relief to redress the deprivation by defendants, their agents, employees and others acting in concert with them, which acts were under color of state law, statute, ordinance, regulation, custom or usage of the plaintiff's rights, privileges and immunities secured by the Constitution of the United States. Jurisdiction rests upon 28 U.S.C. 1343(3), 1343(4) and 1331(a). Plaintiff has been and, unless relief is granted in this case, will continue to be deprived by the defendants of due process of law.

Plaintiff, Charlotte M. Horowitz, is a citizen of the State of New York and defendants are citizens of the State of Missouri. The amount in controversy exceeds, exclusive of interest and costs, the sum of $10,000.00.

Plaintiff is a citizen of the United States and of the State of New York and was admitted to the School of Medicine, University of Missouri-Kansas City (U.M.K.C.) with advanced standing on August 30, 1971.

Defendant, the Curators of the Univeristy of Missouri, is a duly incorporated and created body politic pursuant to Mo. Rev. Stat. 172.020, and is authorized by the Missouri legislature and has powers to determine admissibility of students, appoint and assign all duties and responsibilities to faculty and employees of the University, and confer all degrees.

Defendant Noback is Dean of the University.

Defendant Dimond is Provost-Health Sciences, U.M.K.C.
The complaint also alleges that:

The plaintiff has consistently performed outstandingly during her academic career. Upon application to the school, plaintiff had graduated from Barnard College, had earned an A.M. degree from Columbia University in New York, had studied at Duke University in pharmacology, and had been at the National Institute of Health for approximately five years doing work in psycho-pharamacology, where her scholastic achievements were superior. Enclosed with the application to U.M.K.C. for admission was a personal statement and autobiography, indicating that her ultimate career goal was a position in academic psycho-pharmacology. Plaintiff's scores on Graduate Record Exams were in the top one percent of all scores; her Medical College Admissions Text scores were above the ninetieth percentile in aptitude, and in the ninety-ninth percentile in achievement.

It was with full knowledge of plaintiff's intent to pursue an academic medical career that she was accepted with advanced standing by defendants into the U.M.K.C. School of Medicine at the time the six-year academic program was first being implemented.

On July 5, 1972, defendant Noback, M.D., Dean, sent a letter to plaintiff, relating a discussion between them on the previous Saturday. In the letter it was stated that the the Council on Evaluation had completed a review of Advanced Standing students, including plaintiff. The letter further stated:

> "Your acquisition of information is good, but your relationship with others had (sic) not been good and represents a major deficiency. You need to improve your relationship with others rapidly and substantially. This involves: keeping to established schedules; meeting all clinical responsibilities on time and gracefully; attending carefully to personal appearance including hand washing and grooming; participating

> appropriately in the activities of the School; and directing criticisms and suggestions to your Docent and to the faculty member who is in charge of a curriculum block . . ."

The letter further informed plaintiff she was on probation.

On January 29, 1973, plaintiff received a letter from Dr. Morris A. Lipton, Professor of Psychiatry and Chairman of the Department of Psychitary, and Dr. Arthur J. Prange, Jr., Professor of Psychiatry and Director of Research Development, at the University of North Carolina at Chapel Hill, offering plaintiff a position as Research Associate in the Department of Psychiatry. The position was initially to begin July 1, 1973, and later extended to September 1, 1973. Her salary was to be $10,500.00 plus fringe benefits. The work would consist mainly of assisting doctors in analyzing data and preparing manuscripts. The offer was contingent upon plaintiff's obtaining the degree of Doctor of Medicine.

In a letter of February 7, 1973, after a meeting with plaintiff, Dr. Smull, Dr. W. Sirridge, and defendant Noback, Dr. Noback reiterated that plaintiff's progress had been reviewed by the Council on Evaluation, which made recommendations to the Coordinating Committee, which the latter accepted. Plaintiff was told in the letter:

> ". . . your progress has not been sufficient to show the improvements called for in my letter to you of July 5, 1972; for these reasons, you are being continued on probation; it is not possible for you to be a candidate for graduation in May of this year; and you must make a very marked and very substantial improvement in several areas. These are: clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism."

The plaintiff elected to exercise the option to request a special appeal of the Coordinating Committee's decision and received a letter on March 15, 1973, from Dr. Noback, stating that he had contacted several experienced physicians, whom plaintiff should contact and meet with in a clinical setting, who would evaluate plaintiff as to her "mastery of relevant concepts, knowledge, skills, and competence to function as a physician." After these sessions, each physician submitted a written statement of his recommendation and his reasons therefor. These recommendations went to the Council on Evaluation, which in turn made a recommendation to the Coordinating Committee.

The results of the seven physicians asked to examine and evaluate plaintiff's skills and their recommendations are set out in the complaint.

On the examinations of the National Board of Medical Examiners, plaintiff achieved the highest score among all members of her class on both Part 1 and Part 2. On the psychiatry section, plaintiff scored 795 out of the possible 800, one of the highest scores in the United States.

In a letter, dated August 10, 1972, Dr. William T. Sirridge, Senior Docent and Professor of Medicine at U.M.K.C., stated that plaintiff "has the highest academic standing in the class."

During plaintiff's two years at the medical school, she received only one "no credit" in Emergency Room of all twenty-one clinical and academic courses recorded on her transcript. The grade of "no credit" was recorded after plaintiff was denied the right to graduate in May of 1973.

Between the time plaintiff was put on probation, July 5, 1972, for deficiency in interpersonal relations and the time the Council on Evaluation determined plaintiff should remain on probation (February 7, 1973), plaintiff took two courses: namely, psychiatry and medicine. The psychiatry

evaluation stated that plaintiff felt accepted by people with whom she worked, and the medicine evaluation rated her satisfactory in peer relationships and patient rapport.

On July 6, 1973, plaintiff received a letter from Dr. Noback, stating that the Council on Evaluation had recommended that plaintiff not be allowed to continue in school after the end of May. This decision was subsequently accepted by the Coordinating Committee and Dr. Noback. The letter further concluded that the decision of the school was that plaintiff was no longer a student.

The complaint further alleges that:

The defendants, Curators and others acting under color of law, have deprived plaintiff of rights, privileges and immunities secured under the Constitution and have exercised such powers so as to result in the violation of plaintiff's civil rights.

Defendants have deprived plaintiff of the right to pursue the lawful calling to practice medicine, contingent upon her right to graduate from the University, by an act having no reasonable relation to any proper educational and governmental purpose, which is arbitrary, capricious, and a bad faith exercise of governmental power, thereby violating the due process and equal protection clauses of the Fourteenth Amendment.

Defendants have deprived plaintiff of the right to pursue her lawful calling to practice medicine, contingent upon her right to graduate from the University, by actions such that plaintiff was not given a hearing in which she was allowed to present her position, explanation, evidence, and to produce witnesses in her behalf. Plaintiff's dismissal was not supported by substantial evidence.

Having made an offer to plaintiff accepting her for admission to the School of Medicine, the plaintiff having accepted this offer by registering, a contractual relation-

ship arose between the Curators and plaintiff. Plaintiff agreed to pay tuition and fees and the school agreed to provide instruction and subsequently a degree, if the student remained in good standing academically and abided by the school's rules and regulations. By dismissing plaintiff arbitrarily, the defendants breached their contract and are liable.

The Curators of the University, by dismissing the plaintiff through the above procedures, have unreasonably imposed dismissal and refusal to graduate plaintiff for a cause inconsistent with its functions as a university and in a manner inconsistent with scholarly integrity and fair process.

Plaintiff prays for an injunction, enjoining defendants from dismissing plaintiff from the University of Missouri-Kansas City School of Medicine or alternatively that defendants be ordered to reinstate plaintiff as a student in good standing, to graduate plaintiff, and to enjoin defendants from engaging in policies and practices stated above; that plaintiff be awarded compensatory damage and exemplary and punitive damages in the amount of Ten Thousand Dollars due to the wanton, reckless, malicious and oppressive nature of defendants' actions.

The only issues of fact which are not admitted and remain to be litigated upon the trial are whether the graduating and evaluating system of the Medical School was applied fairly and reasonably to plaintiff; whether plaintiff satisfied all applicable requirements of the Medical School to graduate from the Medical School in June of 1973; whether the plaintiff's past performances in Medical School warranted her being continued in the Medical School beyond June, 1973; whether the progress and status of the plaintiff at the Medical School was evaluated in a manner similar to and consistent with the evaluation of other similarly situated students; whether plaintiff, because of her religion, was evaluated in a manner different than the

evaluation of other students; whether plaintiff, because of her physical appearance, was evaluated in a manner different than the evaluation of other students; whether plaintiff paid her tuition and all associated expenses of her medical expenses in a timely manner upon receipt of statements therefor; whether the education of medical specialists is not among the primary goals of the Medical School; whether plaintiff has suffered damages and, if so, in what amount; whether the actions of defendants in evaluating plaintiff's academic performance, denying graduating and dismissing plaintiff from medical school, were done in good faith.

In addition to the above questions of fact for consideration, plaintiff's counsel submits that the following are also issues of fact in the case: Whether prior to plaintiff's enrollment and during her attendance at the Medical School, plaintiff understood that a requirement to graduate with a degree medical doctor was that she acquire at least a degree of medical skills required by the average medical school in the country; whether prior to May 18, 1973, plaintiff was advised by defendants or their agents that her performance in pediatrics was so deficient that it would be relied upon in part to deny her promotion or graduation or in any way impede her progress through medical school; whether plaintiff has a reading knowledge of French, Russian and German and has experience in medical writing and computer programming.

During the course of the trial, the evidence totally failed to show that any member of the faculty at the U.M.K.C. School of Medicine or any of her docents to which she was assigned during her attendance at the University, or her chief docent, were prejudiced in any way against plaintiff because of her sex, race, religion or appearance. To the contrary, her chief docent, namely, Dr. William Sirridge, testified that if there was any prejudice on his part, it was in favor of the plaintiff rather than unfavorable; that he had spent more time with plaintiff, while

acting as her docent, than he had with any of the other students for which he was docent; that he did everything he possibly could to assist her in obtaining the necessary medical skills to graduate with a M.D. degree; that he spent many hours with her, discussing the problems she was having in school generally. This testimony was further bolstered by Marjorie Sirridge, who was also a docent and professor at the University and who was the wife of Dr. William T. Sirridge.

Dr. William Sirridge testified that plaintiff was always the last to enter a room for classes, was always the last in line in making rounds; that after plaintiff received the letter from Dean Noback on July 5, 1972, he discussed in detail with the plaintiff the need for her keeping to established schedules, meeting all the clinical responsibilities on time and gracefully, and emphasized she must pay more attention to her physical appearance, including her cleanliness and grooming, and that it was necessary for her to participate in all the activities at the school with regard to her classes; that she must learn to accept criticism for what it was, in that it was meant to be of assistance to her and was not meant in a derogatory fashion. Her docent, Dr. William Sirridge, counseled with her on many occasions in an attempt to encourage her to meet all of the required medical skills so that she might graduate on schedule. He further testified that plaintiff would never admit an error; that "it was always other persons fault, not hers"; he encouraged her constantly to keep herself neat and clean and cautioned her on several occasions about the condition of her white coat and its cleanliness, especially when seeing patients, but that plaintiff was unkempt in her personal appearance, about which he cautioned her many times, perhaps a hundred times. Plaintiff was constantly criticizing the school curriculum. He sought to emphasize to her that in order to receive a M.D. degree, it was necessary for her to obtain the necessary medical skills. He attended a meeting of the Council concerning plaintiff at the first evaluation with the effect that she was retained in school. At the second evaluation,

he appeared before the Committee and asked that plaintiff be kept in school. He conferred with the Committee for at least three hours, which resulted in plaintiff's being retained in school. He explained to plaintiff that pediatrics is a necessary part of the program to graduate from the school; that she would have to give more attention to the pediatrics program if she hoped to graduate. He emphasized that plaintiff's problem was that she thought she could learn to be a medical doctor by reading books, and he advised her the clinical skills were equally as important for obtaining the M.D. degree. He further testified that plaintiff cannot perform many of the necessary basic skills required of a practicing physician; that notwithstanding his calling plaintiff's deficiencies to her attention, she did not correct them and he had no knowledge of anyone in the school who was prejudiced against plaintiff because of her sex or her religion; that once a student graduates from the school, that person is then free to practice medicine generally.

Dr. Richardson K. Noback, Dean, U.M.K.C. School of Medicine, also a Professor of Medicine, testified that he counseled with plaintiff on several occasions prior to meeting with the Council and discussing plaintiff's academic status; that on February 7, 1973, after meeting with plaintiff, Dr. Smull, and Dr. W. Sirridge, he wrote a letter to the plaintiff, informing her that she had failed to make sufficient improvement called for in his prior letter of July 5, 1972, when she was placed on probation; that it would not be possible for her to graduate in May, setting forth the reasons for the continued probation and the areas in which she needed to make marked improvements.

The evidence also established that following receipt of the February 7 letter from the Dean, plaintiff elected to exercise the option to request a special appeal of the Coordinating Committee decision. After receiving this request, the Dean then contacted seven experienced physicians, informing them that she would contact them for evaluation and that he wished the

doctors to examine her in clinical setting to evaluate her as to her "mastery of relevant concepts, knowledge, skills and competence to function as a physician." Dr. Noback then advised plaintiff by letter as follows:

March 15, 1973

Miss Charlotte Horowitz
University of Missouri-Kansas City
School of Medicine
Kansas City, Missouri

Dear Miss Horowitz:

In response to your recent request and in keeping with the Academic Plan I have asked seven experienced physicians to serve as a panel to provide a careful, detailed, and thorough assessment of your abilities at this time. The School is asking each of these physicians to conduct such an impartial, careful, and searching assessment of your present competence. For the clinicians this will involve spending several hours with you as you examine one or more patients with each of these physicians and as you discuss the cause, manifestations, pathophysiology, course, and management of the problems of the patient or patients whom you will see. The pathologists may use clinical protocols, slides, and other laboratory items to lead into similar discussions.

The following list contains the names of these physicians, the general topic in the curriculum about which we are asking them to evaluate your performance, and their office telephone numbers.

Dr. Richard D. Blim	Pediatrics	561-8100
Dr. Hilliard Cohen	Pathology / Anatomy	861-4700 X327
Dr. James E. Crockett	General Medicine	931-1884
Dr. Mark Dodge	General Medicine	531-0552

Dr. Raymond W. Latham	Pediatrics	561-6060
Dr. Robert L. Newman	Obstetrics and Gynecology	932-2047
Dr. Mark D. Ost	Pathology / Anatomy	361-3500 X345

I am asking each physician to observe you as you go through those steps and procedures appropriate to a Year 6 student and evaluate the extent of your mastery of relevant concepts, knowledge, skills, and competence to function as a physician. I am asking them to use such steps as observing you as you evaluate a patient by taking the history, carrying out the physical examination, collecting and evaluating other data, formulating a problem list, and developing a management plan. I am asking them to discuss with you the patient's situation and illness to determine the extent of your information as well as other aspects of clinical competence. This may involve discussing the cause, manifestations pathophysiology, course and management of the problems of one or more patients.

At this point I am asking you personally to make contact beginning on Monday, March 19 with each physician on the list to arrange a satisfactory time for this set of oral and practical examinations. The physician's office or his hospital may provide the setting and the patients to be examined. If the physician prefers, the setting may be at one of our affiliated hospitals. You should plan on several hours to a half-day for each of these sessions. Please keep your Docent informed.

At the end of your experience with each of these physicians the School is asking the physician for a careful written statement of his recommendations and the reasons for his recommendations. The recommendations of your examining panel will then go to the Council on Evaluation. That Council will make its recommendations to the Coordinating Committee.

In this way the School has established a careful, deliberate, and impartial process to provide recommendations about your status at this time. On a personal note, I would like to encourage you to look forward to these clinical sessions with experienced and able physicians.

Richardson K. Noback, M.D.
Dean

RKN:j
cc: Dr. William T. Sirridge.

Of the seven doctors contacted, the evidence established the following:

Dr. Newman recommended as follows:

"My recommendation would be that the student not be permitted to graduate at the end of May 1973, that she remain on probation to the end of May 1973 and her performance can be reassessed at that time depending on the evaluation as to whether she should be totally dropped from the school."

Dr. Dodge recommended that he would favor giving plaintiff a M.D. degree, but that she would not qualify to intern at St. Luke's where he practiced.

Dr. Latham stated that plaintiff did not compare favorably in clinical performance with other senior students with which he had worked as an instructor in the pediatric clinics; that she would have to improve a great deal in examination methods and completeness in study of patient problems before she would be a useful member of a hospital staff. He further stated: "I am certain that she is not presently qualified to receive a medical degree but would hesitate to give an opinion about other alternatives."

Dr. Blim stated that Miss Horowitz had been given two patients from Emergency at Mercy Hospital; that she proceeded

with history taking, examination and eventual discussion of the current disease process and discussion of treatment; that as a result of approximately 2½ hours having been spent with Miss Horowitz in a clinical setting, he found she demonstrated substantial deficiencies; that she appeared to have no concept of proper history taking, even lacking the ability to ascertain the chief complaint, and even more difficulty in obtaining any history of present illness, and has no concept or ability to perform a physical exam; that she has not adequately mastered the ability to develop a problem list or differential diagnosis and, of course, cannot develop any reasonable suggestions for further testing and/or thearpy. It was Dr. Blim's firm recommendation that she be dropped from the medical school.

Dr. Hilliard Cohen, Pathologist from the Veterans Administration Hospital, concluded that plaintiff had prepared herself well and was performing very satisfactorily; that she should continue on the curriculum schedule, and recommended that she be graduated at the end of May, 1973.

Dr. Ost recommended that plaintiff should not be graduated from medical school in May and stated he further doubted whether any additional remedial work would be adequate to solve her basic problems which seemed to be ones of personality and inability to correlate information. It was his recommendation that the student be dropped from the medical school.

Dr. Crockett gave the opinion that the plaintiff did not at the time of the interview possess the necessary skills and knowledge to perform as a safe physician and recommended that she be required to continue in the School of Medicine on probationary status for one more year.

It must be noted that only two of the doctors recommended she be graduated, and one of those two doctors, although recommending granting the degree, stated she would not qualify to intern at the hospital where he worked. Five of the seven doc-

tors recommended that she not graduate in 1973. Two of the five recommending that she not graduate recommended an additional period of probation. Two of the five recommending no graduation also recommended that she be dropped from school. One of the five recommending no graduation gave no opinion as to alternatives, other than she was not qualified for a degree. These reports were returned to the Dean and were considered, together with all the other findings of the staff and faculty of the Medical School, by the Council on Evaluation and the Coordinating Committee. In July of 1973 the Council on Evaluation recommended that plaintiff not graduate and that she not continue in the school after the end of May. This evaluation was presented to the Coordinating Committee, which agreed, and the recommendation was accepted by the Dean. Plaintiff was then notified she was no longer a student.

During the course of her attendance at the school, plaintiff wrote some rather scathing letters to her docent in which she criticized severely various members of the staff, both with regard to their conduct and with regard to their ability to perform their various functions. In one of the letters she stated: "The outpatient service was a waste of time and I didn't care for it." She further stated:

> "This was not a learning experience, but an opportunity for the hospital to obtain free labor. I could have learned more medicine by doing half the number of examinations and by having the afternoons free for reading the textbook."

In this same manner she evaluates some of the doctors involved in the outpatient clinic—referring to one of the doctors, namely, Dr. Katherine Smith, as "a bitch and a bigot." In the entire letter she is critical of practically the entire curriculum, the method in which the school was being conducted, the competency of the doctors, several of whom she was of the opinion

were totally incompetent. In referring to Dr. Wenner, one of the docents in pediatrics, she stated as follows:

> "To say the least, I did not care for Dr. Wenner. He is a highly competitive individual who does not like bright students. In fairness to him, he did spend a large amount of time teaching microbiology to us. He knows a great deal about microbiology and likes to show off his knowledge. He is, however, a frustrated pseudointellectual who becomes upset when the Real McCoy shows up."

The evidence further disclosed that the plaintiff was made aware of the requirements that she qualify in clinical skills in order to obtain the M.D. degree.

Statistics showed that at U.M.K.C. Medical School the classes consisted of 20% women in 1971, 20% women in 1972-1973, and 30% women in 1973-1974.

One of the doctors whom plaintiff charges was biased against her because of her religion was Dr. Katherine W. Smith, who testified she had taught plaintiff in the clinic but she does not recall slamming the door in her face; that she had talked to plaintiff about her cleanliness and hygiene and on at least one occasion offered her coat to plaintiff because plaintiff's white coat she was wearing was so very dirty; that she advised plaintiff that she should wash her hands before examining a patient and again after the patient was examined. Plaintiff testified she felt this was a bit much.

In the landmark case of Dixon v. Alabama State Board of Education, 294 F.2d 150 (5 Cir. 1961), students were expelled apparently for engaging in lunch-counter demonstrations. The court held that "the rudiments of an adversary proceeding must be afforded" but stated that on the other hand it was established that "due process" does not require notice and a hearing for a student expelled for scholastic failure; and further

stated that the courts will not intrude into the domain of academic standards where school, not judicial, officials are those properly qualified to execute judgment. However, the courts are not totally precluded from examining scholastic dismissals. If the student was actually expelled for reasons other than the quality of his work or if the student failed because of bad faith or arbitrary or capricious action by an instructor, the courts will order the granting of a fair and impartial hearing. Brookins v. Bonnell, 362 F.Supp. 379 (D.C. E.D.Pa. 1973).

Despite the immunity accorded in academic matters, the determination by educational authorities of a student's academic or emotional fitness may be actionable if the adverse determination complained of is motivated by bad faith; where a medical student has been dismissed for failure to attain the proper standard of scholarship, two questions may be involved: the first, was the student in fact delinquent in his studies or unfit for the practice of medicine; secondly, were the school officials motivated by malice or bad faith in dismissing the student, or did they act arbitrarily or capriciously. In general, the first question is not a matter for judicial review. However, a student dismissal motivated by bad faith, arbitrariness or capriciousness may be actionable. Depperman v. University of Kentucky, 371 F.Supp. 73 (D.C. E.D.Ky. 1974).

As was stated in Keys v. Sawyer, 353 F.Supp. 936 (D.C. S.D.Tex. 1973), university officials should have broad discretionary power to determine the fitness of a student to continue his studies. There is a compelling need and very strong policy consideration in favor of giving local school officials the widest possible latitude in the management of school affairs, and only when there is a clear and convincing showing that an official acted in an arbitrary and capricious manner will the federal courts interfere with the exercise of such discretionary power.

In support of her position, plaintiff relies strongly on Greenhill v. Bailey, — F.2d —, in which the Court of Appeals for

the Eighth Circuit reversed the District Court. The Court of Appeals found that the officials of the University of Iowa College of Medicine had by its action been guilty of denigrating Greenhill's intellectual ability, as distinguished from his performance, and that the action deprived him of a significant interest in liberty, for it admittedly imposed on him a stigma or other disability that forecloses his freedom to take advantage of other opportunities. In reversing the District Court, the Court of Appeals found that the school, by its officials, sent to the Association of American Medical Colleges in Washington, D. C., a form upon which it was indicated that Greenhill had been dismissed "due to Poor Academic Standing" and that the apparent reason therefor was "lack of intellectual ability or insufficient preparation."

Greenhill is readily distinguishable from the present case as shown by the facts enumerated in this opinion.

In the decision of the Court of Appeals, the Court stated:

> "We are well aware that there has long been a distinction between cases concerning disciplinary dismissals, on the one hand, and academic dismissals, on the other. See Brookins v. Bonnell, supra, 362 F.Supp. at 382, and the cases collected therein. Our holding today is not an effort to blur that distinction but rather an acknowledgment that the dictates of due process, long recognized as applicable to disciplinary expulsions (and suspensions of significant length), may apply in other cases as well, where the particular circumstances meet the criteria articulated by the Supreme Court in Board of Regents v. Roth, supra, and Perry v. Sindermann, supra."

At the conclusion of the opinion, and specifically appearing in Footnote 12 thereof, appears the following:

> "Since this case must be remanded for future administrative proceedings, we do not reach Greenhill's contention

that he was denied substantive due process. However, we think this additional caveat is appropriate: For a court to overturn a student's dismissal on substantive grounds it must find that such dismissal was arbitrary and capricious. (citing cases). That standard is a narrow one, to be applied only where administrative action 'is not supportable on any rational basis' or where it is 'willful and unreasoning action, without consideration and in disregard of the facts or circumstances of the case.' First National Bank v. Smith, 508 F.2d 1371, 1376 (8th Cir. 1974). Educational institutions can judge a student's performance better than can a court of law, particularly in an advanced field such as the study of medicine. (citing cases). Only the most compelling evidence of arbitrary or capricious conduct would warrant our interference with the performance evaluation (grades) of a dismissed student made by his teachers."

The evidence presented in this case totally failed to establish that plaintiff was expelled for any reason other than the quality of her work. It also failed to show that dismissal was because of bad faith, arbitrary or capricious action by any instructor. The evidence presented is strongly to the contrary; it appearing that plaintiff's docent went to great lengths and extremes in his efforts to assist the plaintiff in every phase of her education, repeatedly calling to her attention deficiencies noted by the school authorities.

Considering all of the evidence presented, the Court finds that the grading and evaluating system of the medical school was applied fairly and reasonably to plaintiff, but plaintiff did not satisfy the requirements of the medical school to graduate from the medical school in June, 1973.

The Court further finds that plaintiff's performance in the medical school and after having been placed on probation for

an extended period of time did not warrant her being continued in the medical school beyond June, 1973, inasmuch as she had been placed on probation and was repeatedly cautioned of her deficiencies and had been given a year within which to correct the noted deficiencies.

The Court further finds that the progress status of plaintiff in the medical school was evaluated in a manner similar to and consistent with the evaluation of other similarly situated students, with the exception that plaintiff's docent, namely William Sirridge, went to even greater lengths to assist plaintiff in an effort for her to obtain her M.D. degree, than he did for any of his other students. In the opinion of the court, his assistance to the plaintiff went far beyond the call of duty. There was no evidence that plaintiff was in any manner evaluated differently from other students because of her sex or because of her religion. With regard to plaintiff's physical appearance, this in and of itself did not cause plaintiff to be evaluated any differently than any of the other students; however, plaintiff's unkempt appearance and condition were much cause for concern with both faculty and students, and this was brought to her attention on numerous occasions; but she was not treated in any other manner than any other student with similar deficiences would have been treated.

There was no evidence concerning plaintiff's payment of tuition or assessed expenses; thus, the Court assumes they were paid in a timely manner.

The primary goal of U.M.K.C. Medical School is the graduation of students with an M.D. degree, capable of practicing medicine as a physician. The Court does not find that plaintiff has suffered any damage by any improper acts on the part of any of the defendants. The Court finds that defendants acted properly in evaluating plaintiff's academic performance and in denying graduation and in dismissing plaintiff from medical school.

since the evidence overwhelmingly showed plaintiff was not capable of performing as a medical doctor.

The Court further finds that during plaintiff's enrollment and during her attendance at medical school, she was advised, and fully understood, that a requirement to graduate with the degree Medical Doctor was that she acquire at least a degree of clinical skills required by the average medical schools in the United States.

As to whether plaintiff was advised prior to May 18, 1973, that her performance at pediatrics was so deficient that it would be relied on in part to deny her promotion or graduation, or in any way impede her progress through medical school, is of little importance, since the performance in other fields and her proficiency generally were not adequate to permit, much less require, graduation from the school with a degree of Doctor of Medicine. Whether plaintiff has a reading knowledge of French, Russian and German and is experienced in medical writing and computer programming has no bearing on whether or not she is or was a proper candidate for graduation with a degree of Doctor of Medicine.

The Court has considered the procedural due process accorded the plaintiff and in the light of all of the evidence presented and in keeping with the case law heretofore expounded, including the most recent case by the Court of Appeals for the Eighth Circuit, namely, Greenhill v. Bailey, . . . F.2d . . ., finds that, under the facts of this case, plaintiff was afforded full procedural due process by the U.M.K.C. Medical School. In fact, the Court is of the opinion, and so finds, that the school went beyond the procedural due process by affording plaintiff the opportunity to be examined by seven independent physicians in order to be absolutely certain that their grading of the plaintiff in her medical skills was correct.

IT IS, THEREFORE, THE ORDER of this Court that judgment be and the same is hereby entered in favor of the defendants and against plaintiff, Charlotte M. Horowitz. Plaintiff to take nothing by her suit.

Costs to be assessed against the plaintiff. Execution to issue therefor.

s WILLIAM G. JUERGENS
Senior Judge

DATED: November 12, 1975

Supreme Court, U. S.
FILED
JUN 9 1977
MICHAEL RODAK, JR., CLERK

APPENDIX

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 76-695

BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI, et al.,
Petitioners,

v.

CHARLOTTE HOROWITZ,
Respondent.

ON WRIT OF CERTIORARI TO THE EIGHTH CIRCUIT
COURT OF APPEALS OF THE UNITED STATES

PETITION FOR CERTIORARI FILED NOVEMBER 17, 1976

CERTIORARI GRANTED APRIL 18, 1977

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 76-695

BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI, et al.,
Petitioners,

v.

CHARLOTTE HOROWITZ,
Respondent.

ON WRIT OF CERTIORARI TO THE EIGHTH CIRCUIT COURT OF APPEALS OF THE UNITED STATES

APPENDIX

RELEVANT DOCKET ENTRIES
Of the United States District Court for the Western District of Missouri

Date		
1974		
Feb.	1	Complaint Filed
Feb.	27	Answer Filed
Dec.	1	Standard Pre-Trial Order No. 2 Filed

1975

June 16 Trial in Federal District Court

June 17 Trial in Federal District Court

July 11 Transcript of Proceedings Filed

Nov. 14 Memorandum, Order, Judgment Filed and Mailed

Dec. 2 Notice of Appeal—Filed

1976

Sept. 10 Judgment from United States Court of Appeals for the Eighth Circuit—Filed

Sept. 10 Mandate—Filed

Nov. 5 Order—Filed, Mandate—Recalled Pending the Timely Filing and Disposition of Petition for Writ of Certiorari

RELEVANT DOCKET ENTRIES
Of the Eighth Circuit Court of Appeals

Date

1976

July 16 Opinion and Judgment Entered on Opinion

July 21 Petition for Re-Hearing En Banc

Sept. 2 Order Denying Appellees' Petition for Re-Hearing En Banc and for Re-Hearing

Sept. 20 Order Denying Appellees' Motion for Stay of Mandate

Nov. 4 Order of Supreme Court dated November 1, 1976 Granting Stay of Mandate Pending Filing of Certiorari

Nov. 4 Order Directing Clerk of the United States District Court to Return Previously Issued Mandate

Nov. 10 Recalled Mandate Received from Clerk of District Court

Nov. 15 Certified Transcript of Record Transmitted to Clerk of the United States Supreme Court

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In the United States District Court for the
Western District of Missouri
Western Division

Charlotte Horowitz, Plaintiff, v. The Curators of the University of Missouri, et al., Defendant.	Case No. 74CV47W3

STANDARD PRE-TRIAL ORDER NO. 2

(Filed December 1, 1974)

Following pre-trial proceedings pursuant to Rule 16 of the Federal Rules of Civil Procedure and Rule 20 of this Court,

It Is Ordered:

. . . . . .

II. Federal jurisdiction is invoked upon the ground that the causes of action arise under the Constitution and Laws of the United States, specifically 42 U.S.C. 1983 and 28 U.S.C. 2201. Jurisdiction rests upon 28 U.S.C. 1343(3), 1343(4) and 1331 (a). Plaintiff contends that Defendants acting under color of state law, deprived her of due process and equal protection of the law. Plaintiff alleges that in the evaluation of her performance at the Medical School Defendants did not give her notice of meetings, the purpose of which were to evaluate her academic performance and status at the School, failed to provide her with a fair opportunity for a hearing on the issue of her academic performance and status at the Medical School, did not provide her with an opportunity to present written or oral testimony or to submit documentary evidence for consideration at meetings of the Council on Evaluation and Coordinating Committee of the School of Medicine concerning her academic performance and status at the Medical School, and provided for an appeal process that was not specifically authorized by the published Academic Plan of the institution whereby Plaintiff at her option was evaluated by seven physicians who had not been previously engaged with Plaintiff's education, all denying Plaintiff's due process of law. Plaintiff further alleges that she was denied equal protection of the law by Defendants who evaluated her status at the Medical School in a manner different from that of other medical students, in a manner that caused her to be disadvantaged by her sex, religion and physical appearance. Finally, Plaintiff alleges that the decision of Defendants not to permit her to graduate from Medical School was arbitrary, capricious, unreasonable and not supported by sufficient evidence in the administrative record, thus denying her due process of law.

III. The following facts are admitted and will require no proof at trial:

1. Plaintiff Charlotte M. Horowitz is a citizen of the United States, a resident of the State of New York and is presently

domiciled in the State of Missouri as she has been since her admission to the University of Missouri-Kansas City School of Medicine in August of 1971.

2. Defendant The Curators of the University of Missouri is a public corporation of the State of Missouri created pursuant to legislation adopted by the General Assembly of the State of Missouri and is the corporate entity under which is carried out the mission and operation of the state university of the State of Missouri. Defendant Richardson K. Noback, M.D. is the Dean of the School of Medicine of the University of Missouri —Kansas City pursuant to appointment to said position by the Board of Curators of the University of Missouri. Defendant E. Grey Dimond, M.D. is the Provost for Health Sciences of the University of Missouri—Kansas City pursuant to appointment by the Board of Curators of the University of Missouri. Both Defendants Richardson K. Noback and E. Grey Dimond are residents of the State of Missouri. Defendant, The Curators of the University of Missouri and Defendant Dimond and Defendant Noback admit adequate service.

3. The government of the state university of the State of Missouri is vested in the Board of Curators of the University of Missouri pursuant to Article IX, Section 9A and 9B of the Constitution of Missouri, 1945.

4. The School of Medicine of the University of Missouri—Kansas City is part of the public institution of higher education known as the University of Missouri—Kansas City which is a campus of the state university system of the State of Missouri under the governing control of the Board of Curators of the University of Missouri. The School of Medicine of the University of Missouri—Kansas City was established by the Board of Curators of the University of Missouri and admitted the first students to the School of Medicine in August, 1971. The School of Medicine is accredited by the American Association of Medical Colleges.

5. Sometime prior to January 1, 1971, Richardson K. Noback, then acting Dean of the School of Medicine of the University of Missouri—Kansas City provided information to the Association of American Medical Colleges and following that there appeared in the 1970-71 addition of "Medical School Admission Requirements, USA and Canada" at pages 142-143 among other information the following description of goals of the Medical School: ". . . to provide the student with a relevant clinical or basic science model with which he can identify and to which he can aspire," and further under Selection Factors "Each student is considered on the basis of his individual qualifications, without regard to race, creed or sex."

6. Upon the establishment of the School of Medicine at the University of Missouri—Kansas City there was adopted a document entitled "Academic Plan for the School of Medicine of the University of Missouri—Kansas City" which document contains the rules, regulations, policies and procedures to be utilized by the University of Missouri—Kansas City School of Medicine in the education of students at said Medical School. This document establishes the Council on Evaluation composed of faculty and students and the body is charged with the responsibility for the academic evaluation of student performance in the School of Medicine. The Academic Plan establishes a Coordinating Committee with review power over decisions and/or recommendations of the Council of Evaluation on matters of academic evaluation of student performance.

7. On January 24, 1971 Plaintiff wrote to Defendant Noback expressing interest in being admitted as an advanced standing student at the Medical School.

8. Plaintiff had graduated from Barnard College in New York in 1961 with a bachelor's degree in chemistry. In 1963 she was awarded a masters' degree in psychology by Columbia University and thereafter did graduate work at Duke University

and the National Institutes of Health Graduate Program at Bethesda, Maryland.

9. Plaintiff achieved the following scores on the Graduate Record Examination:

Verbal Aptitude	760	99.3 % ile
Quantitative Aptitude	770	99.4 % ile
Advanced Psychology	830	99.9 % ile
Advanced Chemistry	840	99.9 % ile

10. Prior to applying to the Medical School Plaintiff completed 33 semester hours in the graduate program of the National Institute of Health with an average of 3.8 on a scale of A equal to 4.0.

11. During the 1970-71 academic year Plaintiff was a lecturer in the psychopharmacology course in the NIH graduate program.

12. The scores of Plaintiff on the Medical College Admissions Test, with scores in the range of 200 to 800, were as follows:

Verbal Aptitude	655
Quantitative Aptitude	645
General Information	735
Science	735

Scores of 735 are in the 99th % ile.

13. In her letter of January 24, 1971 to Defendant Noback Plaintiff stated that her interest was private practice in psychiatry.

14. On June 21, 1971, Plaintiff received official application forms for admission to the Medical School.

15. On June 30, 1971 Plaintiff wrote to Defendant Noback enclosing the completed application forms for admission to the Medical School.

16. In a narrative statement accompanying her application to the Medical School Plaintiff stated that her previous experience at Woman's Medical College of Pennsylvania had ended when she developed infectious mononucleosis seven weeks into the first semester. Plaintiff in her statement indicated that in retrospect Woman's Medical College was not an appropriate institution for her because it was "dedicated to the production of family physicians. I feel that general practice is not 'my thing' and I am seeking a school where I shall be encouraged to develop along the lines of my natural talents."

17. In her application to the Medical School, Plaintiff pointed out that during her association with the National Institute of Health she had assisted in the preparation of *Diagnosis and Drug Treatment of Psychiatric Disorders*, by Klein and Davis, published in 1969, and had contributed extensively to three chapters. She also pointed out that she had worked with two psychiatrists on the writing of the four clinical psychopharmacology chapters for the second edition of *A Comprehensive Textbook of Psychiatry*, to be published by Williams and Wilkins.

18. On July 9, 1971 Robert W. Colburn, Ph.D., Chief of the Unit on Analytical Biochemistry, National Institute of Mental Health, wrote to Defendant Noback on behalf of the application of Plaintiff Horowitz. Colburn stated:

> CHARLOTTE M. HOROWITZ is an applicant to your medical school.
>
> Charlotte is one of the most gifted persons, postdoctoral or nondoctoral, on the NIH campus. She has a brilliant mind,

> a near-photographic memory, an excellent creative capacity, and the ability to write exceptionally well. Her application cannot be too strongly supported, since she is capable of functioning on a par with some of the best NIH scientist-physicians.
>
> Although Charlotte may tend to be slightly reserved in admissions and job interviews, her natural charm and delightful sense of humor manifest themselves after a short time. She is well-suited for psychiatric practice because of her patience, capacity for empathy, and interest in others. People like to talk to her about their problems. Her knowledge of psychiatry and psychology and her psychological-mindedness are phenomenal.
>
> Charlotte has done very well in her course in the NIH graduate program, where A's are infrequent and attrition rates are high. She is well-motivated and a conscientious worker. She has the intelligence to benefit from a high quality of teaching, and will do well in a system in which much of the responsibility for learning is placed on the student.

19. Also part of Plaintiff's application were letters from Irwin Fridovich, Ph.D., Associate Professor of Biochemistry at Duke University, and W. Edward McGough, Associate Professor of Psychiatry and Associate Dean at Rutgers Medical School. Dr. Fridovich described Plaintiff as "extraordinarily intelligent and diligent" and Dr. McGough described Plaintiff as having "great drive and initiative."

20. On July 22, 1971, Plaintiff appeared at the Medical School and was interviewed by Andrew McCanse, M.D., and Ms. Virginia Calkins. Dr. McCanse informed Plaintiff at the interview that the Medical School would be clinically oriented. Dr. McCanse rated her as follows: *Perception of medicine*, excellent; *ethics*, very good; *stamina*, outstanding; *social con-*

science, outstanding; *problem solving*, outstanding; *honesty* excellent; *interest*, excellent; *leadership*, excellent; *personal appearance*, fair. Dr. McCanse recommended that she be accepted into the Medical School.

21. Virginia Calkins rated Plaintiff as follows: *perception of medicine*, very good; *job experience*, excellent; *reliability*, very good; *self-education*, very good; *organizational and self-discipline skills*, good; *high (college) school curriculum;* very good; *intellectual interests*, very good; *personal appearance*, unsatisfactory. Ms. Calkins recommended that Plaintiff be rejected for admission to the Medical School noting: "The candidate's (sic.) personal appearance is against her—her interests in medicine are in psychiatry—wants to teach in a med-school—she has a slight speech impediment—I don't believe she fits our program." Ms. Calkins noted on the margin of the interview form that Plaintiff "wants 'academic psychiatry' ".

22. On July 28, 1971 Plaintiff was notified by telegram that the Medical School Selection Council had voted her admission as an advanced standing student.

23. It was with full knowledge of Plaintiff's intent to pursue a medical career in psychiatry that she was accepted with advanced standing by defendants into the University of Missouri—Kansas City School of Medicine.

24. On August 6, 1971, Plaintiff by letter notified the Medical School that she intended to enroll as a student pursuant to the School's notification to her on July 28, 1971.

25. Plaintiff was never asked what her religious faith or belief was in any application forms of the School of Medicine nor during any preadmission interviews. At the time plaintiff registered (enrolled) in the School of Medicine, she was asked to complete a series of IBM cards and included therein was a question on religious preference which plaintiff did not answer.

26. Prior to Plaintiff's enrollment and during her attendance at the Medical School at the University of Missouri—Kansas City she was never informed by any representative of the School of Medicine or the University that she would not have to become proficient in clinical skills to qualify for graduation with the M.D. degree.

27. On the National Board Mini-Test in the fall of 1971, at the time she was beginning medical school, plaintiff scored first in the school in basic science and second in clinical studies.

28. Immediately prior to enrolling or shortly thereafter all medical students entering the Medical School were administered the Minnesota Multiphasic Personality Inventory psychological test. Plaintiff took the test on September 1, 1971. The results of plaintiff's psychological test show her to be within the normal range for all clinical test categories.

29. The curriculum of Plaintiff as an advance standing student during her attendance to the School of Medicine at the University of Missouri—Kansas City included instruction in the following rotational units:

Docent Unit—Sept. thru Nov. 1971

Independent Studies—Dec. 1971

Pathology-Anatomy—Jan. thru Feb. 1972

Pediatrics—March thru April, 1972

Blood Bank—May, 1972

Psychiatry—June thru Aug. 1972

Docent Unit—Sept. thru Nov. 1972

Independent Studies—Dec. 1972

Obstetrics-Gynecology—Jan. thru Feb. 1973

Surgery—March thru April, 1973

Emergency Room—May, 1973

Plaintiff received credit for all curriculum rotations with the exception of emergency room for which plaintiff received no credit. Plaintiff received satisfactory grades for all curriculum rotations except emergency room.

30. Course grades at the Medical School are recorded on the transcript of each student as either Credit or No Credit.

31. Plaintiff received a grade of Credit on her transcript in all courses taken during her first year.

32. Plaintiff was enrolled in Pediatrics in March and April, 1972, and received a transcript notation of "credit" immediately upon completion of the course.

33. Defendants deemed the performance of plaintiff in Pediatrics to have been unsatisfactory.

34. On March 22, 1972, while plaintiff was studying in her pediatrics rotation, Professor Herbert A. Wenner, M.D., a professor in pediatrics wrote to plaintiff's docent about plaintiff's performance as follows:

> 1. Her rapport with patients and her expertise in coming to the fundamentals of the clinical problem are below those of her peer group. In particular despite her interest in clinical psychiatry, she does not yet distinguish differences and/or similarities between emotional health and organic disease.
>
> 2. Her fund of information is average; she does not excel for an advanced student.
>
> 3. She is erratic in her attendance in the Clinic.
>
> 4. Several physicians are disturbed by her lack of personal hygiene.

35. In the evaluation report of plaintiff's performance in the pediatrics rotation submitted at the conclusion of the rotation the report of Dr. Ned W. Smull stated as follows:

> "While this student is very bright intellectually, her adaptation to this pediatrics rotation was in general unsatisfactory. Her absenteeism was considerable and her relationship with people (i.e., patients, faculty) was far below that which would be expected of an advanced standing student. I have considerable reservations about this student."

36. In the evaluation report of plaintiff's performance in the pediatrics rotation submitted at the conclusion of the rotation the report of Dr. Herbert A. Wenner stated as follows:

> "Miss Horowitz's performance in the clinic and hospital section was far below that of her peers. Her work in the clinic at the start of the pediatrics rotation was below par, came up during further experiences, but never reached the level of her fellow students.
>
> Miss Horowitz is bright but not quite as alert or knowledgeable as Nelson or Nebbelink. Absenteeism was considerable.
>
> Indeed, she needs to be observed by her docent and, if our observations are correct, she may need counselling."

37. In the evaluation report of plaintiff's performance in the pediatrics rotation submitted at the conclusion of the rotation the report of Dr. Richard Dreher stated as follows:

> "In my opinion Miss Horowitz's performance was below that of her peers in all clinical patient-oriented settings. Her lack of participation did not allow me to judge her intellectual ability although I am told it is quite good. A great deal of discussion was had with various physicians before writing this report."

38. In the evaluation report of plaintiff's performance in the pediatrics rotation submitted at the conclusion of the rotation the report of Dr. Jerome A. Grunt stated as follows:

"This student was very bright. She had a lot of basic knowledge and was most interested in acquiring new knowledge constantly. Her performance, however, was somewhat erratic primarily due to the fact that she tended to relate to people somewhat negatively at times. This was a factor in her relationships with her patients, her peers, and her teachers. I am not at all sure that she would do well in a situation which was primarily clinically oriented. However, since her interests are in the laboratory, I think that in all likelihood she will do an excellent job there."

39. The evaluation reports submitted by the doctors referred to in the three paragraphs immediately preceding based on a rating possibility of 1 to 5 with 5 being the most positive rating gave her an average by Dr. Wenner of 2.9, by Dr. Dreher of 2.3 and by Dr. Grunt of 3.3.

40. Prior to her dismissal from medical school plaintiff was never provided by defendants or their agents with copies of the evaluation reports she had received in Pediatrics nor had she requested them.

41. In the formal pediatrics evaluations, no one commented adversely on plaintiff's personal appearance, although the instructions for Part III listed that as a subject for comment.

42. On June 9, 1972 Plaintiff was recommended by her Docent, William T. Sirridge, M.D., for advancement to Year VI in a six-year program. Her Docent in his evaluation stated: "Her past record is the best in the school; her examination scores are at the very top of the school." With regard to clinical performances her Docent stated. ". . . she has functioned at a high level and has had no problems with a patient at any time, her overall performance on the Docent Unit at General Hospital has been entirely satisfactory."

43. The Docent of plaintiff prepared an evaluation form entitled Student Evaluation Summary in which he indicated the following: *clinical performance*, her clinical performance is definitely above average in quality for a student at her level. She usually can be counted on to be both accurate and thorough; *skill in relating to people*, she is about average in her effectiveness in working with individuals and groups. She is liked by most of those in close contact with her and disliked by almost no one; *initiative or capacity for independent action*, frequently sees what needs to be done and goes ahead with little supervision. She is resourceful in overcoming most difficulties encountered; *ingenuity and flexibility*, has a lot of new ideas. Often calls attention to uses of a technique beyond its original purpose. Adapts quickly and easily to changes in the work situation; *attitude toward work*, she likes her work, and occasionally does extra work because of her personal interest in a problem.

44. The Docent of plaintiff also prepared on or about June 9, 1972 a form entitled Clinical Performance Evaluation, with eighteen categories, rated on a scale from a low of 1 to a high 5. In each of the eighteen categories plaintiff was rated 4 or 5.

45. Following a review by the Council on Evaluation of the academic performance and records of all of the advanced standing students, including plaintiff and following a discussion with the Dean wherein plaintiff was informed of the results of such evaluation, by the Council on Evaluation, the Dean of the Medical School by letter of July 5, 1972 advised plaintiff that plaintiff was placed on probation and informed plaintiff therein of alleged past deficiencies as follows:

Your relationship with others has not been good and represents a major deficiency. You need to improve your relationships with others rapidly and substantially. This involves: keeping to established schedules; meeting all clinical responsibilities on time and gracefully; attending carefully

to personal appearance including hand-washing and grooming; participation appropriately in the activities of the School; and directing criticism and suggestions maturely to your Docent and to faculty member who is in charge of a curriculum block as you may have criticism and suggestions.

46. In a letter of recommendation dated August 17, 1972, written to the Menninger Clinic at the request of plaintiff in respect to her application seeking admission into the Clinic's residency program in psychiatry, Dr. Sirridge said he would have no hesitancy in recommending plaintiff for a straight internship in psychiatry. In an earlier communication to the director of the medical student program at Menninger Clinic, Dr. William T. Sirridge, M.D. stated in respect to the upcoming elective rotation of plaintiff were as follows: "be sure she really does some clinical work, though, doctor. She has a tendency to sit and read and think and talk and do very little when it comes to handling patients."

47. On January 29, 1973, plaintiff received a letter from Dr. Morris A. Lipton, Professor of Psychiatry and Chairman of the Department of Psychiatry and Dr. Arthur J. Prange, Jr., Professor of Psychiatry and Director of Research Development, at the University of North Carolina at Chapel Hill, offering plaintiff a position as Research Associate in the Department of Psychiatry. The position was to begin July 1, 1973 and was later extended to begin September 1, 1973. Salary was to be at an annual rate of $10,500.00 plus certain fringe benefits. The work was to consist mainly of assisting doctors in analyzing data and preparing manuscripts. The offer was contingent upon plaintiff's obtaining the degree of Doctor of Medicine.

48. On November 22, 1972 defendant Dimond circulated a memorandum setting forth newly promulgated procedures of the medical school concerning policies relating to the evaluation of

students and the status of students at the medical school. This was made available to students in the December 11, 1972 *School of Medicine Newsletter*.

49. Between July 5, 1972 and December 26, 1972 plaintiff completed courses in Psychiatry and Medicine (Docent Unit) and received a grade of Credit in both courses.

50. In the evaluation report of plaintiff's performance in docent experience for the period September through November, 1972, her docent evaluated plaintiff's clinical skills as unsatisfactory, but rated her as high satisfactory or superior in all other categories.

51. During this time period, plaintiff took Part I of the National Board Examinations, and ranked first in her class.

52. The Academic Plan, the policies and procedures of the Medical School do not provide for the personal appearances by students before either the Council on Evaluation or the Coordinating Committee at sessions of those bodies where such student's academic performance and status at the Medical School is being considered. Plaintiff was not invited nor did Plaintiff request to appear personally before the Council on Evaluation or the Coordinating Committee at any time when such bodies were considering Plaintiff's academic performance and status at the Medical School.

53. Plaintiff was not advised verbally or in writing that her academic performance and status at the Medical School was to be considered on any particular date by either the Council on Evaluation or the Coordinating Committee of the Medical School, though Plaintiff knew following the month of July, 1972, that such bodies would be considering in the future her academic performance and status at the Medical School.

54. The Council on Evaluation of the School of Medicine for the University of Missouri—Kansas City met on December

26, 1972 to review the Plaintiff's academic performance in the School of Medicine and said Council voted unanimously to approve the following recommendation: "The Council on Evaluation recommends that this student be continued on probation and not be considered as a candidate for the M.D. degree in June, 1973. The student may choose to remain at the UMKC School of Medicine until June 1, 1973 but may not continue beyond that date unless there is radical improvement in the following areas: clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism."

55. The Council on Evaluation met in executive session on December 26, 1972 to consider the status of plaintiff at the Medical School.

56. On January 2, 1973 Ned W. Smull, M.D., Chairman of the Council on Evaluation, forwarded the recommendations of the Council to defendant Noback by a letter.

57. On or about January 26, 1973 plaintiff met with Dr. Sirridge, Dr. Smull, and defendant Noback. At this meeting plaintiff was first informed of the conclusions of the Council on Evaluation reached on December 26, 1972 and approved at a later date by the Coordinating Committee of the Medical School.

58. At the meeting on or about January 26, 1973 and in a letter dated February 7, 1973, plaintiff was informed that she would be continued . . . on probation, that plaintiff would not be a candidate to graduate in May of 1973 and that plaintiff must show marked and very substantial improvement in the areas of clinical competence, peer and patient relations, personal hygiene and ability to accept criticism in order to remain in the Medical School following June 1, 1973. She was also informed that she might request a "special set of oral and practical examinations as an appeal of the decisions" of which she had just been informed.

59. By a letter dated February 9, 1973, plaintiff requested that the appeal procedure described to her be activated. This appeal procedure is not specifically provided for in the Academic Plan of the Medical School and, in the history of the Medical School, has been utilized only in the case of plaintiff. No other student has requested an appeal of a decision.

60. By letter of March 15, 1973 from defendant Noback plaintiff was notified that she was to be examined by seven experienced physicians (none of whom had had appreciable contact with plaintiff during her attendance at the medical school), who had been instructed to "provide a careful, detailed, and thorough assessment of (her) abilities . . ."

61. Pursuant to the appeal of Plaintiff, Dean Richardson K. Noback did establish a panel of seven experienced physicians none of which had had appreciable contact with the Plaintiff during her attendance at the School of Medicine and requested each to carry out an oral and practical examination of the Plaintiff pursuant to his letter to them dated March 15, 1973.

62. Defendant Noback met in person with the seven examiners prior to their examining plaintiff. Plaintiff was not informed of this meeting or of other meetings, nor was she allowed to participate.

63. The seven examining physicians on the appeals panel were informed by the Dean of the Medical School that their reports and evaluations would be confidential.

64. The seven appointed physicians examined plaintiff and the results of the evaluations by the seven examining physicians were reported in individual letters to defendant Noback who submitted them to the Council on Evaluation.

65. To the extent that factual discrepancies may exist between events as they occurred and events as they are described in the letters of the seven examining physicians on the Appeal

Committee. Plaintiff was never afforded an opportunity to present evidence regarding her version of the events to the Council on Evaluation or the Coordinating Committee at meetings of those bodies where such letters were being considered.

66. On May 1, 1973 the Council on Evaluation met to consider the status of plaintiff at the Medical School.

67. Prior to the meeting of the Council on Evaluation on May 1, 1973, plaintiff was not advised of the results of evaluation of her performance by the seven examining physicians. Copies of the letters of evaluation from the seven examining physicians who constituted the appeals panel were not provided to plaintiff until after plaintiff had been discharged from the Medical School and she had not requested copies at an earlier date.

68. Between December 26, 1972 and May 1, 1973 plaintiff completed courses in Independent Study, Obstetrics-Gynecology, and Surgery, receiving a grade of Credit in all courses.

69. In the evaluation report of plaintiff's performance on the OB/Gyn rotation for January through February, 1973 the report describes the performance of plaintiff as being unsatisfactory in patient rapport; low satisfactory in clinical skills, ingenuity and conscientiousness; average in attitude and peer relations; high satisfactory in reliability and clinical concepts; low superior in medical information and superior in integrity. The report concludes:

> "Charlotte reads alot for this reason, theoretically, she is a good but in practical application she is far behind her colleagues. Her attitude and the way she dresses leave a definite question as to her future as a doctor."

70. In the evaluation report of plaintiff's performance in the surgery rotation on March-April, 1973 the report stated as follows: "I think that her total experience here was satisfactory, but just barely so." Plaintiff was rated low satisfactory or better in all categories except ingenuity which was rated as unsatisfactory.

71. The Coordinating Committee of the School of Medicine met on May 7, 1973, to consider the recommendation of the Council on Evaluation that plaintiff not graduate in May of 1973 and the Coordinating Committee voted to sustain the Council's recommendation that Plaintiff not be allowed to graduate by vote of five in favor, none against, one abstention.

72. The Council on Evaluation met in executive session on May 14, 1973 and unanimously agreed that barring receipt of any reports that plaintiff had improved radically, that plaintiff not be allowed to re-enroll in the UMKC School of Medicine.

73. The Council on Evaluation met in executive session on May 28, 1973 and unanimously recommended that plaintiff be dropped from the UMKC School of Medicine.

74. By letter dated May 18, 1973, Plaintiff was notified by the Dean of the School of Medicine that the Council on Evaluation after receiving the evaluation report of the seven independent examining physicians had again recommended that Plaintiff not graduate in May, 1973 which recommendation had been accepted by the Coordinating Committee of the School of Medicine.

75. In the evaluation report of Plaintiff's performance in the emergency room rotation dated May 25, 1973, the report declared Plaintiff's performance as follows:

attitude—unsatisfactory

peer relations—unsatisfactory

reliability—unsatisfactory

medical information—unsatisfactory

clinical concepts—unsatisfactory

clinical skills—unsatisfactory

patient rapport—satisfactory

ingenuity—unsatisfactory

conscientiousness—unsatisfactory

integrity—satisfactory.

76. Plaintiff was the only student at the Medical School of the University of Missouri—Kansas City who elected to take emergency room rotation at Menorah Hospital and thus was the only student evaluated by the supervisor of the emergency room of Menorah Hospital, Dr. Richard Chung.

77. The Coordinating Committee of the School of Medicine of the University of Missouri—Kansas City met on June 4, 1973 to discuss the recommendation of the Council on Evaluation that the Plaintiff not be allowed to continue in the School of Medicine and the Coordinating Committee accepted the recommendation of the Council on Evaluation that Plaintiff be dropped from the School of Medicine by vote of five yes, none voting against and three abstentions.

78. By letter of July 6, 1973, Plaintiff was notified by the Dean of the School of Medicine of the University of Missouri —Kansas City that he had accepted the recommendation of the Council on Evaluation and the Coordinating Committee and that the Plaintiff was no longer a student of the School of Medicine of the University of Missouri—Kansas City.

79. Plaintiff's docent, Dr. William T. Sirridge, appeared before the Council on Evaluation on three occasions when the Council on Evaluation was considering the academic performance and status of the Plaintiff at the Medical School.

80. At numerous times during her attendance at the Medical School, and prior to her dismissal, Plaintiff consulted with her docent, Dr. William T. Sirridge in respect to her performance

in the Medical School, the reasons for her being placed on probation and the reasons for which the Medical School deemed her performance deficient. Plaintiff appeared before, discussed and was heard in respect to her performance by the Dean of the Medical School, Dr. Richardson K. Noback, and the Assistant Dean, Dr. Ned W. Smull, and her docent leader, Dr. William T. Sirridge; in July, 1972 with Noback, in September and October, 1972 with Sirridge for docent reviews, and in January and May, 1973 with Sirridge, Noback and Smull.

81. It is the intent and purpose of the University of Missouri-Kansas City School of Medicine to educate and graduate safe and competent doctors that are qualified to engage as safe physicians in the general practice of medicine and a medical student must acquire the necessary skills, facts and concepts to become a safe physician in order to qualify for graduation.

82. The School of Medicine defines and utilizes the following terms as follows:

satisfactory—

the descriptive term used to describe the performance of a student which meets the standard of acceptable performance for a medical student relating to that aspect of their curriculum.

unsatisfactory—

the descriptive term used to describe the performance of a student where the performance was below the standard of acceptable performance for medical students relating to that aspect of their curriculum.

credit—

a transcript notation indicating that the performance of a student where satisfactory or unsatisfactory was minimally acceptable to the Medical School to the extent that the course need not be repeated.

no credit—
the opposite of credit.

passing—
equivalent to credit.

83. The primary goal and desire of the School of Medicine is to educate medical students to become safe physicians who will practice in a field of medicine rendering primary care to the general public. The School of Medicine encourages the students to practice medicine in the field of primary care to patients.

84. Of the advanced standing students who graduated from the School of Medicine with the class in which Plaintiff was dismissed, Plaintiff had the highest composite score on part 1 of the written National Board Examination for medical students and Plaintiff received the second highest composite score on part 2 of the written National Board Examination.

85. For students who entered the School of Medicine at the time the Plaintiff entered, the School established a curriculum designed to provide each student an opportunity to gain the concepts, facts, skills and competency required for the medical degree. The typical and general curriculum being as follows:

	length of rotation	**Number of rotation**	**subtotal**
*Docent Team	3 months	4	12
*Pediatrics	2 months	3	6
*Pathology/Anatomy	2 months	2	4
*Blood Bank	1 month	1	1
Study	1 month	2	2
Elective	1 month	12	12
*Surgery	2 months	1	2
*Obstetrics and Gynecology	2 months	1	2
*Emergency Room	1 month	1	1
TOTAL			42

* These are required courses. The student must have them or demonstrate competency in those not taken.

86. Plaintiff completed all required courses from the standpoint of devoting the required time.

87. Plaintiff was the only student admitted with advanced standing in the year 1971 to the School of Medicine whose residency was in a state geographically located east of the Appalachian Mountains.

88. Dr. William T. Sirridge, docent of Plaintiff, stated that in May, 1973 Plaintiff lacked the necessary clinical skills to be qualified as a safe physician.

89. At the request of Dr. William T. Sirridge, Plaintiff's docent and Dr. Richardson K. Noback, Dean of the Medical School, Plaintiff consulted with and from time to time was under psychiatric consultation since May of 1972.

90. The grade of "no credit" received by Plaintiff in emergency room was received after Plaintiff had been informed that she would not graduate in October, 1973.

91. The terms satisfactory, unsatisfactory, credit and no credit were not defined in any policy, regulation, newsletter or other announcements of the Medical School prior to the dismissal of Plaintiff.

92. The policies and regulations of the Medical School do not state the requirements for graduation in terms of the successful completion of any number of percentage of courses nor do the policies of the Medical School specify that students should not be graduated for not having successfully completed a course or courses.

93. No student scoring poorly in a subject on the National Board Examinations was required to take remedial work in that subject.

94. On quarterly exams given by the Medical School, Plaintiff ranked second in her class in total score on the May, 1973

exam and fourth in her class on the February, 1973 exam. On the May, 1973 exam, she placed either first or second in fourteen of the thirty testing categories.

In the United States District Court for the
Western District of Missouri
Western Division

Civil Action No. 74CV47-W-3

Charlotte M. Horowitz,
Plaintiff,

vs.

The Curators of the University of Missouri
University of Missouri, Columbia, Missouri,
William H. Billings, Irvin Fane, Pleasant R. Smith, William C. Myers, Jr., Mrs. William C. Tucker, John Sam Williamson, Robert G. Brady, Theodore D. McNeal, G. Fred Kling, Jr.
[members of the Board of Curators of the University of Missouri, individually and in their official capacities.]
Richardson K. Noback, M.D., Dean of School of Medicine, University of Missouri-Kansas City, Kansas City, Missouri
E. Grey Dimond, M.D., Provost-Health Sciences, University of Missouri-Kansas City, Kansas City, Missouri

and

ALL other persons succeeding to or acting in the offices or official capacities of the above-named, and their agents, subordinates, and employees,
Defendants.

Juergens,* Senior Judge

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* United States Senior District Judge William G. Juergens of the Eastern District of Illinois is sitting by assignment.

MEMORANDUM AND ORDER

(Filed November 14, 1975)

This civil rights action was tried to the Court without a jury on July 16 and 17, 1975.

The complaint alleges that:

> Jurisdiction exists under the provisions of the Civil Rights Act, 42 U.S.C. 1983 and 28 U.S.C. 2201, and seeks declaratory judgment, damages, injunctive and other relief to redress the deprivation by defendants, their agents, employees and others acting in concert with them, which acts were under color of state law, statute, ordinance, regulation, custom or usage of the plaintiff's rights, privileges and immunities secured by the Constitution of the United States. Jurisdiction rests uopn 28 U.S.C. 1343(3), 1343(4) and 1331(a). Plaintiff has been and, unless relief is granted in this case, will continue to be deprived by the defendants of due process of law.

Plaintiff, Charlotte M. Horowitz, is a citizen of the State of New York and defendants are citizens of the State of Missouri. The amount in controversy exceeds, exclusive of inter and costs, the sum of $10,000.00.

Plaintiff is a citizen of the United States and of the State of New York and was admitted to the School of Medicine, University of Missouri-Kansas City (U.M.K.C.) with advanced standing on August 30, 1971.

Defendant, the Curators of the University of Missouri, is a duly incorporated and created body politic pursuant to Mo. Rev. Stat. 172.020, and is authorized by the Missouri legislature and has powers to determine admissibility of students, appoint and assign all duties and responsibilities

to faculty and employees of the University, and confer all degrees.

Defendant Noback is Dean of the University.

Defendant Dimond is Provost-Health Sciences, U.M.K.C. The complaint also alleges that:

The plaintiff has consistently performed outstandingly during her academic career. Upon application to the school, plaintiff had graduated from Barnard College, had earned an A.M. degree from Columbia University in New York, had studied at Duke University in pharmacology, and had been at the National Institute of Health for approximately five years doing work in psycho-pharmacology, where her scholastic achievements were superior. Enclosed with the application to U.M.K.C. for admission was a personal statement and autobiography, indicating that her ultimate career goal was a position in academic psycho-pharmacology. Plaintiff's scores on Graduate Record Exams were in the top one percent of all scores; her Medical College Admissions Text scores were above the ninetieth percentile in aptitude, and in the ninety-ninth percentile in achievement.

It was with full knowledge of plaintiff's intent to pursue an academic medical career that she was accepted with advanced standing by defendants into the U.M.K.C. School of Medicine at the time the six-year academic program was first being implemented.

On July 5, 1972, defendant Noback, M.D., Dean, sent a letter to plaintiff, relating a discussion between them on the previous Saturday. In the letter it was stated that the Council on Evaluation had completed a review of Advanced Standing students, including plaintiff. The letter further stated:

> "Your acquisition of information is good, but your relationship with others had (sic) not been good and

> represents a major deficiency. You need to improve your relationship with others rapidly and substantially. This involves: keeping to established schedules; meeting all clinical responsibilities on time and gracefully; attending carefully to personal appearance including hand washing and grooming; participating appropriately in the activities of the School; and directing criticisms and suggestions to your Docent and to the faculty member who is in charge of a curriculum block . . ."

The letter further informed plaintiff she was on probation.

On January 29, 1973, plaintiff received a letter from Dr. Morris A. Lipton, Professor of Psychiatry and Chairman of the Department of Psychiatry, and Dr. Arthur J. Prange, Jr., Professor of Psychiatry and Director of Research Development, at the University of North Carolina at Chapel Hill, offering plaintiff a position as Research Associate in the Department of Psychiatry. The position was initially to begin July 1, 1973, and later extended to September 1, 1973. Her salary was to $10,500.00 plus fringe benefits. The work would consist mainly of assisting doctors in analyzing data and preparing manuscripts. The offer was contingent upon plaintiff's obtaining the degree of Doctor of Medicine.

In a letter of February 7, 1973, after a meeting with plaintiff, Dr. Smull, Dr. W. Sirridge, and defendant Noback, Dr. Noback reiterated that plaintiff's progress had been reviewed by the Council on Evaluation, which made recommendations to the Coordinating Committee, which the latter accepted. Plaintiff was told in the letter:

> ". . . your progress has not been sufficient to show the improvements called for in my letter to you of July 5, 1972; for these reasons, you are being continued on probation; it is not possible for you to be

a candidate for graduation in May of this year; and you must make a very marked and very substantial improvement in several areas. These are: clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism."

The plaintiff elected to exercise the option to request a special appeal of the Coordinating Committee's decision and received a letter on March 15, 1973, from Dr. Noback, stating that he had contacted several experienced physicians, whom plaintiff should contact and meet with in a clinical setting, who would evaluate plaintiff as to her "mastery of relevant concepts, knowledge, skills, and competence to function as a physician." After these sessions, each physician submitted a written statement of his recommendation and his reasons therefor. These recommendations went to the Council on Evaluation, which in turn made a recommendation to the Coordinating Committee.

The results of the seven physicians asked to examine and evaluate plaintiff's skills and their recommendations are set out in the complaint.

On the examinations of the National Board of Medical Examiners, plaintiff achieved the highest score among all members of her class on both Part 1 and Part 2. On the psychiatry section, plaintiff scored 795 out of the possible 800, one of the highest scores in the United States.

In a letter, dated August 10, 1972, Dr. William T. Sirridge, Senior Docent and Professor of Medicine at U.M.K.C., stated that plaintiff "has the highest academic standing in the class."

During plaintiff's two years at the medical school, she received only one "no credit" in Emergency Room of all twenty-one clinical and academic courses recorded on her

transcript. The grade of "no credit" was recorded after plaintiff was denied the right to graduate in May of 1973.

Between the time plaintiff was put on probation, July 5, 1972, for deficiency in interpersonal relations and the time the Council on Evaluation determined plaintiff should remain on probation (February 7, 1973), plaintiff took two courses; namely, psychiatry and medicine. The psychiatry evaluation stated that plaintiff felt accepted by people with whom she worked, and the medicine evaluation rated her satisfactory in peer relationships and patient rapport.

On July 6, 1973, plaintiff received a letter from Dr. Noback, stating that the Council on Evaluation had recommended that plaintiff not be allowed to continue in school after the end of May. This decision was subsequently accepted by the Coordinating Committee and Dr. Noback. The letter further concluded that the decision of the school was that plaintiff was no longer a student.

The complaint further alleges that:

The defendants, Curators and others acting under color of law, have deprived plaintiff of rights, privileges and immunities secured under the Constitution and have exercised such powers so as to result in the violation of plaintiff's civil rights.

Defendants have deprived plaintiff of the right to pursue the lawful calling to practice medicine, contingent upon her right to graduate from the University, by an act having no reasonable relation to any proper educational and governmental purpose, which is arbitrary, capricious, and a bad faith exercise of governmental power, thereby violating the due process and equal protection clauses of the Fourteenth Amendment.

Defendants have deprived plaintiff of the right to pursue her lawful calling to practice medicine, contingent upon her

right to graduate from the University, by actions such that plaintiff was not given a hearing in which she was allowed to present her position, explanation, evidence, and to produce witnesses in her behalf. Plaintiff's dismissal was not supported by substantial evidence.

Having made an offer to plaintiff accepting her for admission to the School of Medicine, the plaintiff having accepted this offer by registering, a contractual relationship arose between the Curators and plaintiff. Plaintiff agreed to pay tuition and fees and the school agreed to provide instruction and subsequently a degree, if the student remained in good standing academically and abided by the school's rules and regulations. By dismissing plaintiff arbitrarily, the defendants breached their contract and are liable.

The Curators of the University, by dismissing the plaintiff through the above procedures, have unreasonably imposed dismissal and refusal to graduate plaintiff for a cause inconsistent with its functions as a university and in a manner inconsistent with scholarly integrity and fair process.

Plaintiff prays for an injunction, enjoining defendants from dismissing plaintiff from the University of Missouri-Kansas City School of Medicine or alternatively that defendants be ordered to reinstate plaintiff as a student in good standing, to graduate plaintiff, and to enjoin defendants from engaging in policies and practices stated above; that plaintiff be awarded compensatory damage and exemplary and punitive damages in the amount of Ten Thousand Dollars due to the wanton, reckless, malicious and oppressive nature of defendants' actions.

The only issues of fact which are not admitted and remain to be litigated upon the trial are whether the graduating and evaluating system of the Medical School was applied fairly and

reasonably to plaintiff; whether plaintiff satisfied all applicable requirements of the Medical School to graduate from the Medical School in June of 1973; whether the plaintiff's past performances in Medical School warranted her being continued in the Medical School beyond June, 1973; whether the progress and status of the plaintiff at the Medical School was evaluated in a manner similar to and consistent with the evaluation of other similarly situated students; whether plaintiff, because of her religion, was evaluated in a manner different than the evaluation of other students; whether plaintiff, because of her physical appearance, was evaluated in a manner different than the evaluation of other students; whether plaintiff paid her tuition and all associated expenses of her medical expenses in a timely manner upon receipt of statements therefor; whether the education of medical specialists is not among the primary goals of the Medical School; whether plaintiff has suffered damages and, if so, in what amount; whether the actions of defendants in evaluating plaintiff's academic performance, denying graduating and dismissing plaintiff from medical school, were done in good faith.

In addition to the above questions of fact for consideration, plaintiff's counsel submits that the following are also issues of fact in the case: Whether prior to plaintiff's enrollment and during her attendance at the Medical School, plaintiff understood that a requirement to graduate with a degree medical doctor was that she acquire at least a degree of medical skills required by the average medical school in the country; whether prior to May 18, 1973, plaintiff was advised by defendants or their agents that her performance in pediatrics was so deficient that it would be relied upon in part to deny her promotion or graduation or in any way impede her progress through medical school; whether plaintiff has a reading knowledge of French, Russian and German and has experience in medical writing and computer programming.

During the course of the trial, the evidence totally failed to show that any member of the faculty at the U.M.K.C. School of Medicine or any of her docents to which she was assigned during her attendance at the University, or her chief docent, were prejudiced in any way against plaintiff because of her sex, race, religion or appearance. To the contrary, her chief docent, namely, Dr. William Sirridge, testified that if there was any prejudice on his part, it was in favor of the plaintiff rather than unfavorable; that he had spent more time with plaintiff, while acting as her docent, than he had with any of the other students for which he was docent; that he did everything he possibly could to assist her in obtaining the necessary medical skills to graduate with a M.D. degree; that he spent many hours with her, discussing the problems she was having in school generally. This testimony was further bolstered by Marjorie Sirridge, who was also a docent and professor at the University and who was the wife of Dr. William T. Sirridge.

Dr. William Sirridge testified that plaintiff was always the last to enter a room for classes, was always the last in line in making rounds; that after plaintiff received the letter from Dean Noback on July 5, 1972, he discussed in detail with the plaintiff the need for her keeping to established schedules, meeting all the clinical responsibilities on time and gracefully, and emphasized she must pay more attention to her physical appearance, including her cleanliness and grooming, and that it was necessary for her to participate in all the activities at the school with regard to her classes; that she must learn to accept criticism for what it was, in that it was meant to be of assistance to her and was not meant in a derogatory fashion. Her docent, Dr. William Sirridge, counseled with her on many occasions in an attempt to encourage her to meet all of the required medical skills so that she might graduate on schedule. He further testified that plaintiff would never admit an error; that "it was always other persons fault, not hers"; he encouraged her constantly to keep herself neat and clean and cautioned her on several occasions

about the condition of her white coat and its cleanliness, especially when seeing patients, but that plaintiff was unkempt in her personal appearance, about which he cautioned her many times, perhaps a hundred times. Plaintiff was constantly criticizing the school curriculum. He sought to emphasize to her that in order to receive a M.D. degree, it was necessary for her to obtain the necessary medical skills. He attended a meeting of the Council concerning plaintiff at the first evaluation with the effect that she was retained in school. At the second evaluation, he appeared before the Committee and asked that plaintiff be kept in school. He conferred with the Committee for at least three hours, which resulted in plaintiff's being retained in school. He explained to plaintiff that pediatrics is a necessary part of the program to graduate from the school; that she would have to give more attention to the pediatrics program if she hoped to graduate. He emphasized that plaintiff's problem was that she thought she could learn to be a medical doctor by reading books, and he advised her the clinical skills were equally as important for obtaining the M.D. degree. He further testified that plaintiff cannot perform many of the necessary basic skills required of a practicing physician; that notwithstanding his calling plaintiff's deficiencies to her attention, she did not correct them and he had no knowledge of anyone in the school who was prejudiced against plaintiff because of her sex or her religion; that once a student graduates from the school, that person is then free to practice medicine generally.

Dr. Richardson K. Noback, Dean, U.M.K.C. School of Medicine, also a Professor of Medicine, testified that he counseled with plaintiff on several occasions prior to meeting with the Council and discussing plaintiff's academic status; that on February 7, 1973, after meeting with plaintiff, Dr. Smull, and Dr. W. Sirridge, he wrote a letter to the plaintiff, informing her that she had failed to make sufficient improvement called for in his prior letter of July 5, 1972, when she was placed on probation; that it would not be possible for her to graduate in May, setting forth

the reasons for the continued probation and the areas in which she needed to make marked improvements.

The evidence also established that following receipt of the February 7 letter from the Dean, plaintiff elected to exercise the option to request a special appeal of the Coordinating Committee decision. After receiving this request, the Dean then contacted seven experienced physicians, informing them that she would contact them for evaluation and that he wished the doctors to examine her in clinical setting to evaluate her as to her "mastery of relevant concepts, knowledge, skills and competence to function as a physician." Dr. Noback then advised plaintiff by letter as follows:

March 15, 1973

Miss Charlotte Horowitz
University of Missouri-Kansas City
School of Medicine
Kansas City, Missouri

Dear Miss Horowitz:

In response to your recent request and in keeping with the Academic Plan I have asked seven experienced physicians to serve as a panel to provide a careful, detailed, and thorough assessment of your abilities at this time. The School is asking each of these physicians to conduct such an impartial, careful, and searching assessment of your present competence. For the clinicians this will involve spending several hours with you as you examine one or more patients with each of these physicians and as you discuss the cause, manifestations, pathophysiology, course, and management of the problems of the patient or patients whom you will see. The pathologists may use clinical protocols, slides, and other laboratory items to lead into similar discussions.

The following list contains the names of these physicians, the general topic in the curriculum about which we are asking them to evaluate your performance, and their office telephone numbers.

Dr. Richard D. Blim	Pediatrics	561-8100
Dr. Hilliard Cohen	Pathology/Anatomy	861-4700 X327
Dr. James E. Crockett	General Medicine	931-1884
Dr. Mark Dodge	General Medicine	531-0552
Dr. Raymond W. Latham	Pediatrics	561-6060
Dr. Robert L. Newman	Obstetrics and Gynecology	932-2047
Dr. Mark D. Ost	Pathology/Anatomy	361-3500 X345

I am asking each physician to observe you as you go through those steps and procedures appropriate to a Year 6 student and evaluate the extent of your mastery of relevant concepts, knowledge, skills, and competence to function as a physician. I am asking them to use such steps as observing you as you evaluate a patient by taking the history, carrying out the physical examination, collecting and evaluating other data, formulating a problem list, and developing a management plan. I am asking them to discuss with you the patient's situation and illness to determine the extent of your information as well as other aspects of clinical competence. This may involve discussing the cause, manifestations, pathophysiology, course and management of the problems of one or more patients.

At this point I am asking you personally to make contact beginning on Monday, March 19 with each physician on the list to arrange a satisfactory time for this set of oral and practical examinations. The physician's office or his hospital may provide the setting and the patients to be examined. If the physician prefers, the setting may be at one of our affiliated hospitals. You should plan on several hours to a half-day for each of these sessions. Please keep your Doctor informed.

At the end of your experience with each of these physicians the School is asking the physician for a careful written statement of his recommendations and the reasons for his recommendations. The recommendations of your examining panel will then go to the Council on Evaluation. That Council will make its recommendations to the Coordinating Committee.

In this way the School has established a careful, deliberate, and impartial process to provide recommendations about your status at this time. On a personal note, I would like to encourage you to look forward to these clinical sessions with experienced and able physicians.

Richardson K. Noback, M.D.
Dean

RKN:j

cc: Dr. William T. Sirridge.

Of the seven doctors contacted, the evidence established the following:

Dr. Newman recommended as follows:

> "My recommendation would be that the student not be permitted to graduate at the end of May 1973, that she remain on probation to the end of May 1973 and her performance can be reassessed at that time depending on the evaluation as to whether she should be totally dropped from the school."

Dr. Dodge recommended that he would favor giving plaintiff a M.D. degree, but that she would not qualify to intern at St. Luke's where he practiced.

Dr. Latham stated that plaintiff did not compare favorably in clinical performance with other senior students with which

he had worked as an instructor in the pediatric clinics; that she would have to improve a great deal in examination methods and completeness in study of patient problems before she would be a useful member of a hospital staff. He further said: "I am certain that she is not presently qualified to receive a medical degree but would hesitate to give an opinion about other alternatives."

Dr. Blim stated that Miss Horowitz had been given two patients from Emergency at Mercy Hospital; that she proceeded with history taking, examination and eventual discussion of the current disease process and discussion of treatment; that as a result of approximately 2½ hours having been spent with Miss Horowitz in a clinical setting, he found she demonstrated substantial deficiencies; that she appeared to have no concept of proper history taking, even lacking the ability to ascertain the chief complaint, and even more difficulty in obtaining any history of present illness, and has no concept or ability to perform a physical exam; that she has not adequately mastered the ability to develop a problem list or differential diagnosis and, of course, cannot develop any reasonable suggestions for further testing and/or therapy. It was Dr. Blim's firm recommendation that she be dropped from the medical school.

Dr. Hilliard Cohen, Pathologist from the Veterans Administration Hospital, concluded that plaintiff had prepared herself well and was performing very satisfactorily; that she should continue on the curriculum schedule, and recommended that she be graduated at the end of May, 1973.

Dr. Ost recommended that plaintiff should not be graduated from medical school in May and stated he further doubted whether any additional remedial work would be adequate to solve her basic problems which seemed to be ones of personality and inability to correlate information. It was his recommendation that the student be dropped from the medical school.

Dr. Crockett gave the opinion that the plaintiff did not at the time of the interview possess the necessary skills and knowledge to perform as a safe physician and recommended that she be required to continue in the School of Medicine on probationary status for one more year.

It must be noted that only two of the doctors recommended she be graduated, and one of those two doctors, although recommending granting the degree, stated she would not qualify to intern at the hospital where he worked. Five of the seven doctors recommended that she not graduate in 1973. Two of the five recommending that she not graduate recommended an additional period of probation. Two of the five recommending no graduation also recommended that she be dropped from school. One of the five recommending no graduation gave no opinion as to alternatives, other than she was not qualified for a degree. These reports were returned to the Dean and were considered, together with all the other findings of the staff and faculty of the Medical School, by the Council on Evaluation and the Coordinating Committee. In July of 1973 the Council on Evaluation recommended that plaintiff not graduate and that she not continue in the school after the end of May. This evaluation was presented to the Coordinating Committee, which agreed, and the recommendation was accepted by the Dean. Plaintiff was then notified she was no longer a student.

During the course of her attendance at the school, plaintiff wrote some rather scathing letters to her docent in which she criticized severely various members of the staff, both with regard to their conduct and with regard to their ability to perform their various functions. In one of the letters she stated: "The outpatient service was a waste of time and I didn't care for it." She further stated:

> "This was not a learning experience, but an opportunity for the hospital to obtain free labor. I could have learned more medicine by doing half the number of examinations and by having the afternoons free for reading the textbook."

In this same manner she evaluates some of the doctors involved in the outpatent clinic—referring to one of the doctors, namely, Dr. Katherine Smith, as "a bitch and a bigot." In the entire letter she is critical of practically the entire curriculum, the method in which the school was being conducted, the competency of the doctors, several of whom she was of the opinion were totally incompetent. In referring to Dr. Wenner, one of the docents in pediatrics, she stated as follows:

> "To say the least, I did not care for Dr. Wenner. He is a highly competitive individual who does not like bright students. In fairness to him, he did spend a large amount of time teaching microbiology to us. He knows a great deal about microbiology and likes to show off his knowledge. He is, however, a frustrated pseudointellectual who becomes upset when the Real McCoy shows up."

The evidence further disclosed that the plaintiff was made aware of the requirements that she qualify in clinical skills in order to obtain the M.D. degree.

Statistics showed that at U.M.K.C. Medical School the classes consisted of 20% women in 1971, 20% women in 1972-1973, and 30% women in 1973-1974.

One of the doctors whom plaintiff charges was biased against her because of her religion was Dr. Katherine W. Smith, who testified she had taught plaintiff in the clinic but she does not recall slamming the door in her face; that she had talked to plaintiff about her cleanliness and hygiene and on at least one occasion offered her coat to plaintiff because plaintiff's white coat she was wearing was so very dirty; that she advised plain-

tiff that she should wash her hands before examining a patient and again after the patient was examined. Plaintiff testified she felt this was a bit much.

In the landmark case of Dixon v. Alabama State Board of Education, 294 F.2d 150 (5 Cir. 1961), students were expelled apparently for engaging in lunch-counter demonstrations. The court held that "the rudiments of an adversary proceeding must be afforded" but stated that on the other hand it was established that "due process" does not require notice and a hearing for a student expelled for scholastic failure; and further stated that the courts will not intrude into the domain of academic standards where school, not judicial, officials are those properly qualified to execute judgment. However, the courts are not totally precluded from examining scholastic dismissals. If the student was actually expelled for reasons other than the quality of his work or if the student failed because of bad faith or arbitrary or capricious action by an instructor, the courts will order the granting of a fair and impartial hearing. Brookins v. Bonnell, 362 F.Supp. 379 (D.C. E.D.Pa. 1973).

Despite the immunity accorded in academic matters, the determination by educational authorities of a student's academic or emotional fitness may be actionable if the adverse determination complained of is motivated by bad faith; where a medical student has been dismissed for failure to attain the proper standards of scholarship, two questions may be involved; the first, was the student in fact delinquent in his studies or unfit for the practice of medicine; secondly, were the school officials motivated by malice or bad faith in dismissing the student, or did they act arbitrarily or capriciously. In general, the first question is not a matter for judicial review. However, a student dismissal motivated by bad faith, arbitrariness or capriciousness may be actionable. Depperman v. University of Kentucky, 371 F.Supp. 73 (D.C. E.D.Ky. 1974).

As was stated in Keys v. Sawyer, 353 F.Supp. 936 (D.C. S.D.Tex. 1973), university officials should have broad discretionary power to determine the fitness of a student to continue his studies There is a compelling need and very strong policy consideration in favor of giving local school officials the widest possible latitude in the management of school affairs, and only when there is a clear and convincing showing that an official acted in an arbitrary and capricious manner will the federal courts interfere with the exercise of such discretionary power.

In support of her position, plaintiff relies strongly on Greenhill v. Bailey, — F.2d —, in which the Court of Appeals for the Eighth Circuit reversed the District Court. The Court of Appeals found that the officials of the University of Iowa College of Medicine had by its action been guilty of denigrating Greenhill's intellectual ability, as distinguished from his performance, and that the action deprived him of a significant interest in liberty, for it admittedly imposed on him a stigma or other disability that forecloses his freedom to take advantage of other opportunities. In reversing the District Court, the Court of Appeals found that the school, by its officials, sent to the Association of American Medical Colleges in Washington, D. C., a form upon which it was indicated that Greenhill had been dismissed "due to Poor Academic Standing" and that the apparent reason therefore was "lack of intellectual ability or insufficient preparation."

Greenhill is readily distinguishable from the present case as shown by the facts enumerated in this opinion.

In the decision of the Court of Appeals, the Court stated:

> "We are well aware that there has long been a distinction between cases concerning disciplinary dismissals, on the one hand, and academic dismissals, on the other. See Brookins v. Bonnell, supra, 362 F.Supp. at 382, and the cases collected therein. Our holding today is not an

effort to blur that distinction but rather an acknowledgment that the dictates of due process, long recognized as applicable to disciplinary expulsions (and suspensions of significant length), may apply in other cases as well, where the particular circumstances meet the criteria articulated by the Supreme Court in Board of Regents v. Roth, supra, and Perry v. Sindermann, supra."

At the conclusion of the opinion, and specifically appearing in Footnote 12 thereof, appears the following:

"Since this case must be remanded for future administrative proceedings, we do not reach Greenhill's contention that he was denied substantive due process. However, we think this additional caveat is appropriate: For a court to overturn a student's dismissal on substantive grounds it must find that such dismissal was arbitrary and capricious. (citing cases). That standard is a narrow one, to be applied only where administrative action 'is not supportable on any rational basis' or where it is 'willful and unreasoning action, without consideration and in disregard of the facts or circumstances of the case.' First National Bank v. Smith, 508 F.2d 1371, 1376 (8th Cir. 1974). Educational institutions can judge a student's performance better than can a court of law, particularly in an advanced field such as the study of medicine. (citing cases). Only the most compelling evidence of arbitrary or capricious conduct would warrant our interference with the performance evaluation (grades) of a dismissed student made by his teachers."

The evidence presented in this case totally failed to establish that plaintiff was expelled for any reason other than the quality of her work. It also failed to show that dismissal was because of bad faith, arbitrary or capricious action by any instructor. The evidence presented is strongly to the contrary: it appearing that plaintiff's docent went to great lengths and extremes in his

efforts to assist the plaintiff in every phase of her education, repeatedly calling to her attention deficiencies noted by the school authorities.

Considering all of the evidence presented, the Court finds that the grading and evaluating system of the medical school was applied fairly and reasonably to plaintiff, but plaintiff did not satisfy the requirements of the medical school to graduate from the medical school in June, 1973.

The Court further finds that plaintiff's performance in the medical school and after having been placed on probation for an extended period of time did not warrant her being continued in the medical school beyond June, 1973, inasmuch as she had been placed on probation and was repeatedly cautioned of her deficiencies and had been given a year within which to correct the noted deficiencies.

The Court further finds that the progress status of plaintiff in the medical school was evaluated in a manner similar to and consistent with the evaluation of other similarly situated students, with the exception that plaintiff's docent, namely William Sirridge, went to even greater lengths to assist plaintiff in an effort for her to obtain her M.D. degree, than he did for any of his other students. In the opinion of the court, his assistance to the plaintiff went far beyond the call of duty. There was no evidence that plaintiff was in any manner evaluated differently from other students because of her sex or because of her religion. With regard to plaintiff's physical appearance, this in and of itself did not cause plaintiff to be evaluated any differently than any of the other students; however, plaintiff's unkempt appearance and condition were much cause for concern with both faculty and students, and this was brought to her attention on numerous occasions; but she was not treated in any other manner than any other student with similar deficiencies would have been treated.

There was no evidence concerning plaintiff's payment of tuition or assessed expenses; thus, the Court assumes they were paid in a timely manner.

The primary goal of U.M.K.C. Medical School is the graduation of students with an M.D. degree, capable of practicing medicine as a physician. The Court does not find that plaintiff has suffered any damage by any improper acts on the part of any of the defendants. The Court finds that defendants acted properly in evaluating plaintiff's academic performance and in denying graduation and in dismissing plaintiff from medical school, since the evidence overwhelmingly showed plaintiff was not capable of performing as a medical doctor.

The Court further finds that during plaintiff's enrollment and during her attendance at medical school, she was advised, and fully understood, that a requirement to graduate with the degree Medical Doctor was that she acquire at least a degree of clinical skills required by the average medical schools in the United States.

As to whether plaintiff was advised prior to May 18, 1973, that her performance at pediatrics was so deficient that it would be relied on in part to deny her promotion or graduation, or in any way impede her progress through medical school, is of little importance, since the performance in other fields and her proficiency generally were not adequate to permit, much less require, graduation from the school with a degree of Doctor of Medicine. Whether plaintiff has a reading knowledge of French, Russian and German and is experienced in medical writing and computer programming has no bearing on whether or not she is or was a proper candidate for graduation with a degree of Doctor of Medicine.

The Court has considered the procedural due process accorded the plaintiff and in the light of all of the evidence presented and in keeping with the case law heretofore expounded, including the most recent case by the Court of Appeals for the Eighth Circuit, namely, Greenhill v. Bailey, . . . F.2d . . ., finds that, under the facts of this case, plaintiff was afforded full procedural due process by the U.M.K.C. Medical School. In fact, the Court is of the opinion, and so finds, that the school went beyond the procedural due process by affording plaintiff the opportunity to be examined by seven independent physicians in order to be absolutely certain that their grading of the plaintiff in her medical skills was correct.

IT IS, THEREFORE, THE ORDER of this Court that judgment be and the same is hereby entered in favor of the defendants and against plaintiff, Charlotte M. Horowitz. Plaintiff to take nothing by her suit.

Costs to be assessed against the plaintiff. Execution to issue therefor.

/s WILLIAM G. JUERGENS
Senior Judge

DATED: November 12, 1975

United States Court of Appeals
For the Eighth Circuit

No. 75-1949

Charlotte Horowitz,

Appellant,

v.

Board of Curators of the University of Missouri, et al.,

Appellees.

Appeal from the United States District Court for the Western District of Missouri.

Submitted: June 15, 1976

Filed: July 16, 1976

Before HEANEY, ROSS and STEPHENSON, Circuit Judges.

ROSS, Circuit Judge.

Charlotte Horowitz has brought this action under 42 U.S.C. § 1983 challenging her dismissal from the University of Missouri-Kansas City (UMKC) School of Medicine in July 1973. The defendants are the governing body of the institution and certain officials of the medical school. The case was tried without a jury and judgment was for the defendants, from which Horowitz now appeals. We reverse the district court judgment.

The facts are not seriously in dispute. The UMKC Medical School admitted its first students in August 1971; Horowitz was admitted at that time as an advanced standing student. She has a Bachelor's degree in chemistry from Barnard College and a Master's in psychology from Columbia University. She studied pharmacology at Duke for one year, taking the same curriculum as the first year medical students there. She began as a sophomore at the Women's Medical College of Pennsylvania but withdrew in good standing because of illness her first semester. She also did graduate study and worked in the field of psychopharmacology at the National Institute of Health in Bethesda, Maryland for five years. She scored above the 99th percentile on the Graduate Record Examination in Verbal Aptitude, Quantitative Aptitude, Advanced Psychology and Advanced Chemistry. Her scores on the Medical College Admissions Test were also extremely high, with scores in the 99th percentile in the General Information and Science categories. She received excellent recommendations from those with whom she had worked at the National Institute of Health and educators.

The UMKC Medical School's curriculum is intended to educate its students to become competent practicing physicians. Therefore, the school considers that a student must become proficient in clinical skills in order to earn an M.D. degree. Both Horowitz and the University knew at the time of her entrance, however, that she intended to become a psychiatrist and teach or do research.

The policies and regulations of the school do not state the requirements of graduation in terms of a certain number of courses which must be completed. During the last two years of medical education at UMKC a student is required to pursue studies in rotational units which deal with various areas of medicine: e.g. Pathology-Anatomy, Psychiatry, Obstetrics-Gynecology. These units generally included clinical responsibilities as well as academic study. Horowitz received credit for all these rotations except Emergency Room, her last rotation, which was not completed until after it was determined she would not graduate.[1] Her academic (as opposed to practical) performance cer-

[1] The University draws a distinction between receiving credit and satisfactorily completing a course, and contends that Horowitz did not satisfactorily complete courses besides Emergency Room. It does not appear that this distinction was communicated to Horowitz or the other students, however.

tainly gave no cause for complaint. She scored first in the school on Part I of the National Board Examination for medical students and second on Part II. She ranked fourth in her class in quarterly exams in February, 1973, and second in the May 1973 exams. In the latter examination she was either first or second in 14 of the 30 categories.

Although she received credit in all rotational units except Emergency Room and her docent, the faculty member who had the closest contact with her, regarded her performance as outstanding throughout her first year,[2] other faculty members felt her clinical performance was deficient. This first came to light in the spring of 1972 when faculty members in the Pediatrics course criticized her lack of patient rapport and "expertise in coming to the fundamentals of the clinical problem," erratic attendance, and poor personal hygiene. These criticisms were brought to Horowitz's attention by her docent, although she was not shown her formal course evaluations.

Toward the end of her first year at the school, Horowitz's record was reviewed by the Council on Evaluation, a body of students and faculty which recommended to the Dean that she not be advanced to Year VI, the final year of the medical school. However, in a letter dated July 5, 1972, which confirmed an earlier conversation, the Dean told Horowitz that she was being advanced to Year VI, but was on probation. The letter pointed out her deficiencies as follows:

> Your acquisition of information is good. Your relationship with others has not been good and represents a major deficiency. You need to improve your relationship with others rapidly and substantially. This involves keeping to established schedules; meeting all clinical responsibilities on time and gracefully; attending carefully to personal appearance, including hand washing and grooming; participating appropriately in the activities of the School; and directing criticisms and suggestions maturely to your Docent and to the faculty member who is in charge of a curriculum block as you may have criticisms and suggestions.

[2] The docent's role was compared by UMKC to that of an ombudsman. During a student's academic career he or she would have more frequent and closer contact with the docent than any other faculty member. Horowitz's docent testified that he would have recommended that she be allowed to graduate in the Spring of 1973, and be given a residency, and in fact he had so recommended in June 1972.

The letter also stated that noncompliance with certain standards of conduct "is incompatible with continued progress and graduation." After she was placed on probation, Horowitz was counseled frequently by her docent, the Dean and other faculty members until her ultimate dismissal.

In November of 1972 the University's Provost for the Health Sciences promulgated changes in the procedures for deciding questions of students' academic standing. The Council on Evaluation thereafter made recommendations to the Coordinating Committee, which consisted of faculty members. The Coordinating Committee had veto power over the Council's recommendations, and the Dean had veto power over recommendations of the Coordinating Committee. Provision was made for students' personal appearances before the Council upon its request if that body felt it had inadequate information. It was also provided that a student could be given additional practical and oral examinations if the Council needed to resolve questions of competence as a physician. On December 26, 1972, the Council on Evaluation reconsidered Horowitz's status and recommended that she not be allowed to graduate on schedule in June 1973. This recommendation was accepted by the Coordinating Committee. The Dean approved this recommendation and on February 7, 1973, he wrote a letter to Horowitz reviewing a conference with her, held January 26. The Dean's letter stated that she had not made sufficient progress as outlined in the

July 5 letter and was being continued on probation. She was informed that she would not be able to graduate as scheduled and that she would have to improve markedly in the areas of clinical competence, peer and patient relations, personal hygiene and ability to accept criticism. If she did not make the improvement considered necessary by the Council on Evaluation, she would not be able to continue at the medical school after May. She was told that she could request a set of oral and practical examinations as an "appeal" of the decision not to graduate her in the spring of 1973. Horowitz initiated such a request.

Since no such proceeding had ever been requested and no procedures had been set up, the school had to create a procedure to be followed in Horowitz's case. It was arranged that she would be examined by seven experienced physicians on the faculty, none of whom had appreciable previous contact with Horowitz. They would evaluate her clinical abilities in the areas of pediatrics, pathology and anatomy, general medicine, and obstetrics and gynecology. The Dean informed the seven physicians by letter and a meeting that they were to make one of three recommendations: a) graduation on schedule; b) continued probation and reassessment of her status in May 1973; c) dismissal from the medical school. The option of recommending additional study after May 1973 without dismissal was not given to them. A majority opinion of the seven doctors was to be determined and submitted to the Council on Evaluation. The examinations were conducted and the doctors submitted their reports. Two recommended that Horowitz graduate on schedule, two recommended that she continue on probation, and two recommended that she be dropped from school. One believed she was not qualified to graduate at that time, but expressed no further opinion. Although there was no clear majority opinion the panel was not called together as the procedures contemplated. Their written individual recommendations were submitted to the Council on Evaluation.

On May 1, 1973, after considering the panel's reports, the Council reaffirmed its opinion that Horowitz should not be allowed to graduate in June, and the Coordinating Committee accepted this recommendation. The Dean also approved, and on May 7, this decision was communicated to Ms. Horowitz. At that time she was told that a decision would be made soon on whether she would be allowed to remain in school. Horowitz wrote a letter to the Dean requesting that she be allowed to remain in school for a short time to correct her deficiencies, but this letter was not answered.

On May 28, 1973, the Council on Evaluation met again to reconsider Horowitz's status in light of her performance in courses taken that spring, and it was decided that she should be dropped from the school. On June 4 the Coordinating Committee accepted this recommendation and Horowitz was notified by the Dean that she was no longer in school on July 3. Horowitz sought reversal of this decision from the Provost for the Health Sciences, who denied her request.

Horowitz was never given a chance to appear before the Council on Evaluation, the Coordinating Committee or the Dean, for a hearing during the dismissal procedure, nor was she informed of the time or place of any of their meetings. Neither was she given copies of the formal evaluations or other evidence which the Council and the Committee considered.

The evidence reveals that Horowitz rejected suggestions by the medical school faculty that she alter her professional plans and seek a Ph.D. rather than a medical degree because a Ph.D. would not allow her to conduct the experimentation in psychopharmacology that was her goal. It was stipulated that she was offered employment at the University of North Carolina, conditional upon her obtaining the degree of Doctor of Medicine, and she testified that she had accepted that offer in November 1972. It was also uncontroverted that Horowitz's dismissal from medical school will make it difficult or impossible for her

to obtain employment in a medically related field or to enter another medical school.[3]

The district court, in holding for defendants, relied on "the immunity accorded [educational authorities] in academic matters . . .", absent a showing of bad faith or arbitrary and capricious action. We are cognizant that some decisions recognize a distinction between expulsions for misconduct and academic failure. *See, e.g., Brookins v. Bonnell*, 362 F.Supp. 379, 382 (E.D. Pa. 1973). We express no opinion on the validity of that distinction under other circumstances. However, our decision in *Greenhill v. Bailey*, 519 F.2d 5, 8-9 (8th Cir. 1975) acknowledges "that the dictates of due process, long recognized as applicable to disciplinary expulsions . . . may apply in other cases as well, where the particular circumstances meet the criteria articulated by the Supreme Court in *Board of Regents v. Roth*, [408 U.S. 564 (1972)], and *Perry v. Sindermann* [408 U.S. 593 (1972)]." In *Board of Regents v. Roth*, *supra*, 408 U.S. at 573, the Court recognized that action of the state which "imposed . . . a stigma or other disability that foreclosed . . . freedom to take advantage of other employment opportunities" was a deprivation of liberty which could not be accomplished without notice and a hearing. In *Greenhill, supra*, 519 F.2d at 8, we found such stigmatization where a medical student's expulsion for academic failure on the basis of lack of intellectual ability or inadequate preparation effectively foreclosed him from pursuing a medical education, because of the inherent suggestion that he was unfit to study medicine.

[3] Dr. Cohen who had 30 years of experience in hiring M.D.'s Ph.D.'s and others for medical research in various institutions testified:

> Yes, I would be very much concerned about an individual who was dismissed from a medical school, or, for that matter, from any graduate school. This to me is a very serious matter and I would have to look very carefully into that person's background, record and so forth. And if there were two individuals that, say, that person or someone else were applying and otherwise would have equal qualifications, roughly, I would lean heavily to the other person who was not dismissed from a graduate school.
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> Yes, I think it would be a significant black mark against that person's name, I think it would stigmatize that individual. I think that person would probably be—well, would have great difficulty to get into another medical school, if at all.

Transcript at 25-26. We note that UMKC's own application forms require that a student fully explain the reasons they were required to leave "any college, graduate or professional school . . . because of deficiencies in either conduct or scholarship." Plaintiff's Exhibit 10. We believe the evidence in this case makes it factually distinguishable from those in which a damaging stigma was not proved or was inadequately alleged. *E.g. Bishop v. Wood*, No. 74-1003 (U.S., June 10, 1976); *Board of Regents v. Roth*, 408 U.S. 564, 573-574 (1972).

The unrefuted evidence here establishes that Horowitz has been stigmatized by her dismissal in such a way that she will be unable to continue her medical education, and her chances of returning to employment in a medically related field are severely damaged. The dismissal was effected without the hearing required by the fourteenth amendment.[4]

We reverse and remand to the district court with instructions to order defendants to provide Horowitz with a hearing before the decision making body or bodies, at which she shall have an opportunity to rebut the evidence being relied upon for her dismissal and accorded all other procedural due process rights.[5]

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit.

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[4] The parties agree that the appeal procedure, involving tests administered by the panel of seven doctors, related only to the decision not to graduate Horowitz, and not to the decision to expel her. Nevertheless, we doubt that this procedure would satisfy the requirement of due process, since the panel itself was only an examining board without any power except the power to make recommendations to another body which also had only that same power.

[5] Because of our disposition of this case we do not reach the substantive due process ground advanced by Horowitz.

United States Court of Appeals
For the Eighth Circuit

No. 75-1949

Charlotte Horowitz, Appellant. v. Board of Curators of the University of Missouri, et al., Appellees.	Appeal from the United States District Court for the Western District of Missouri

Filed: September 2, 1976

ORDER DENYING PETITION FOR REHEARING EN BANC

The petition for rehearing en banc is denied by a vote of 5 to 3. Chief Judge Gibson, joined by Judges Webster and Henley, would grant the rehearing en banc for the following reasons.

My main concern with this decision is that it impermissively injects the courts into the academic environment of colleges and professional schools to an unacceptable degree. Educational institutions are much more qualified and better positioned to promulgate and enforce procedures which regulate academic performance. Dismissals due to academic deficiencies are not uncommon and schools may be expected to review the files of a number of students during the course of an academic year to determine whether expulsion is warranted. The present case seems to require the schools to give all such students formal notification of their deficiencies and an opportunity to respond before dismissal, regardless of how egregious the deficiency

might be. Such a rule is likely to foment future litigation and subject educational institutions to unnecessary monitoring and to possible monetary judgments. This decision is not, in my opinion, in accord with existing principles of constitutional law and fails to give sufficient deference to the perspective and unique position of school administrators.

The dismissal of Horowitz from the U.M.K.C. School of Medicine did not implicate any liberty interest which would mandate the invocation of procedural due process guarantees. The dismissal did not stigmatize Horowitz in a constitutional sense. The Supreme Court recently ruled that an individual's good name, reputation or integrity is not impaired when he is dismissed frrom employment for false reasons unless there has been a public disclosure of the reasons for discharge. *Bishop v. Wood*, 44 U.S.L.W. 4820, 4822 (U.S. June 10, 1976). Absent such public disclosure, there is no deprivation of a liberty interest. In the present case, the reasons for Horowitz's dismissal were not released to the public but were communicated to her directly by school officials.

Greenhill v. Bailey, 519 F.2d 5 (8th Cir. 1975), is factually distinguishable from the present case and, thus, not controlling. In *Greenhill*, the student was dismissed because he allegedly lacked the intellectual ability to continue in medical school. This denigrating information was disseminated outside of the medical school by school officials when notification of the student's dismissal was forwarded to the Liaison Committee of the Association of American Medical Colleges. No such public disclosure took place in this case. In the *Greenhill* opinion, the court noted that the school's action disparaged only plaintiff's intellectual capacity as opposed to his performance in school. Here, it was Horowitz's deficient performance in the clinical program which provided the sole basis for her dismissal; there was no reference to her intellectual abilities.

Even if due process rights were involved in this case, I believe Horowitz received all the process that was called for under the circumstances. She was informed several times of her inadequacies in the clinical program. She was counseled by the Dean and faculty members. She submitted to a series of oral and practical examinations before a panel of seven doctors and only two doctors were of the opinion that she was qualified to graduate on schedule. Her deficiencies remained uncorrected and she was dismissed from school. Horowitz clearly was given sufficient notice of her weaknesses and she was informed that dismissal might result if corrective measures were not successfully pursued. This notice and the opportunity over the course of a year to correct her deficiencies were sufficient for due process purposes.

Unless it can be shown that a student's dismissal was actually motivated by a desire to limit the student's constitutionally protected rights, *see Bishop v. Wood*, 44 U.S.L.W. at 4823, courts should stay their hands and permit schools to pursue their institutional policies without judicial interference.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

[*20] HILLIARD COHEN

called as a witness on behalf of the plaintiff, having been previously sworn, testified as follows:

Direct Examination

By Mr. Benson:

Q. Please state your full name. A. Hilliard Cohen.

Q. Dr. Cohen, how are you employed? A. I am employed by the Veterans Administration in Kansas City, Missouri.

Q. In what capacity? A. As director of clinical pathology.

Q. How long have you been so employed, Dr. Cohen? A. Almost nine years.

The Court: Keep your voice up, please, Doctor.

A. Almost nine years.

Q. (By Mr. Benson) When did you obtain your medical degree? A. 1938.

Q From what institution did you obtain that? A. University of Maryland.

Q. Have you had any graduate medical training? A. Yes.

Q. Where was that? A. Sinai Hospital in Baltimore, Michael Reece Hospital in Chicago, Mount Sinai Hospital in New York City, and the **[21]** U. S. Army.

Q. What is the area of your specialty training? A. Pathology.

Q. Have you had any research experience? A. Yes.

Q. What area of pathology is your research experience? A. My interest is in leukemia and lymphoma.

Q. Have you had any experience teaching medicine? A. Yes.

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* Numbers appearing in brackets in text indicate page numbers of original stenographic transcript of testimony.

Q. Where did you obtain that experience? A. I've been on the faculty at the University of Kansas Medical School for roughly 20-odd years.

Q. In the course of that time have you had an opportunity to teach students of varying degrees of progress in the medical school? A. Yes, I have.

Q. Including senior medical students? A. Senior medical students, sophomores, juniors, interns, residents.

Q. Have you had any other appointments to medical schools other than to the University of Kansas? A. No.

Q. Have you participated in the—or did you participate in the establishment of the UMKC Medical School? A. Yes, I was on the advisory committee and helped to plan **[22]** the curriculum at the new medical school and department of pathology and I've on occasion given some guest lectures at the new medical school.

Q. Within recent years have you had any experience with senior medical students? A. Yes, I have.

Q. What experience is that? A. Well, the Veterans Administration Hospital is a direct affiliated institution of the University of Kansas and all the medical students and all the house officers, interns and residents take a regular rotational scheme in their education through the Veterans Administration Hospital. And then I from time to time am involved with seminars and lectures at the medical school in which I come in contact with senior medical students.

Q. When you say medical school, which medical school are you talking of? A. University of Kansas.

Q. How many medical schools are there here in the Kansas City area? A. There are two, University of Kansas in Kansas City, Kansas, and University of Missouri in Kansas City, Missouri.

Q. They're both close to each other, are they not? A. Yes, they are.

[23] Q. Have you had any experience in the area of personnel work, hiring graduate students, doctoral candidates for MDs, PhDs? A. Yes, I have.

Q. What has that experience been? A. Over the course of the last 20 or 30 years I've hired MDs, PhDs, individuals with graduate degrees, master's degrees, individuals with bachelor's degrees and individuals with no degrees.

Q. For what types of jobs or in what institutions? A. Primarily for working in the laboratory.

Q. The laboratory of what types of institutions? A. Laboratory at the Menorah Medical Center where I was director for 18 years prior to coming to the Veterans Hospital, and at the Veterans Hospital itself. And also I am on the—recently I was selected to be a member of the appointing committee for physicians to be employed at the University of Kansas Medical Center.

Q. In the course of that personnel experience do you have an opportunity to review resumes? A. Yes, I do.

Q. And interview candidates for positions? A. That is correct.

Q. Does it require any type of specialized knowledge or training to hire doctoral candidates, MDs or PhDs for **[24]** research training at a medical institution? A. Yes, it does.

Q. Do you believe you have that type of specialized knowledge? A. I believe I do.

* * * * * * *

[25] Q. (By Mr. Benson) Dr. Cohen, in the same circumstances if an applicant applied for a research job at a medical institution and that applicant had received an MD in a field such as pharmacology or biochemistry from a respectable institution and the applicant had otherwise good credentials for its PhD,

but that that applicant had prior, at some prior time in his or her career, been dismissed from a medical school would that place the applicant at a substantial disadvantage? A. Yes, I would be very much concerned about an individual who was dismissed from a medical school, or, for that matter, from any graduate school. This to me is a very serious matter and I would have to look very carefully into that person's background, record and so forth. And **[26]** if there were two individuals that, say, that person or someone else were applying and otherwise would have equal qualifications, roughly, I would lean heavily to the other person who was not dismissed from a graduate school.

Q. Do persons such as you making personnel decisions at medical institutions have the time and resources to investigate the reasons that a person might have been dismissed from medical school to determine whether such reasons would be disqualifying for the employment? A. It would take an enormous amount of time and I don't know that I would have that time to do it. It would be very difficult.

Q. Would you have an opinion as to whether such a dismissal from medical school would be substantially disqualifying to an applicant seeking such employment? A. Yes, I think it would be a significant black mark against that person's name, I think it would stigmatize that individual, I think that person would probably be—well, would have great difficulty to get into another medical school, if at all.

Q. When you say get into another medical school, you also are referring to employment in medical institutions, not as a doctor? A. Yes.

Q. Dr. Cohen, in the spring of 1973 did you have an occasion **[27]** to meet Charlotte Horowitz? A. Yes, I did.

Q. How did that occasion arise? A. Dr. Noback, who is dean of the medical school, contacted me and asked me if I

would agree to be one of a number of physicians in Kansas City to examine Charlotte Horowitz, and I agreed to do so.

Q. Doctor, I'm handing you what has been admitted into evidence as Plaintiff's Exhibit 58. Ask you if you can identify that document. A. Yes, I can.

Q. Is this the official request you received from Dean Noback to participate on the panel of examining physicians? A. That is correct. Yes, it is.

Q. Had you previously agreed by telephone to serve on that committee? A. Yes, I did.

Q. Had you received any background as to the necessity for such an appeal process or an examining panel? A. Not prior to that time, no.

Q. In the course of the telephone call had you received any information? A. Well, I think in a general way, I'm not certain about this, but as I recall either then or shortly after then **[28]** Dr. Noback told me about the opportunity for the student to appeal such a decision and then that was further expanded on when we had a meeting with Dr. Noback at the St. Luke's Hospital.

Q. Did you meet with other persons with Dr. Noback at that hospital, St. Luke's? A. Yes.

Q. What was the purpose of that meeting? A. Well, as I understood it that meeting was to—I'm going to refer to my notes. May I do that?

Q. Certainly. A. That meeting was to lay the ground rules, as I understood them, for the examinations we were to carry out and we were to be given some information about what the problems were, why this student, for example, was being examined and what the reasons for the performance of this individual—I mean, why they were not satisfactory.

Q. Who was in attendance at that meeting? A. There was Dr. Noback, Dr. Ray Latham, Dr. Blim and myself.

Q. Do you recall what the date of that meeting was? A. That meeting was on March 19.

The Court: What year, Doctor?

A. 1973.

Q. (By Mr. Benson) Did you express any concerns to Dean Noback at that meeting concerning the review procedure **[29]** that he had described to you? A. Yes, I did.

Q. What were those concerns? A. At that meeting I mentioned—well, first, I was rather impressed with the fact that the emphasis that Dr. Noback placed on this student, on Charlotte Horowitz, related almost—well, predominantly to matters that did not have to deal with academic or scholastic achievement but rather matters like her personal appearance, her grooming, something about interpersonal relationships and only minimally about her clinical performance. And I had a feeling at this meeting that this was the major concern of Dr. Noback. And I was so concerned about this that I indicated to Dr. Noback that it appeared to me that his mind was pretty much made up about Charlotte Horowitz and why go through with the examinations. I didn't want to be a party to an examination that I felt was just going through an exercise. So at that meeting in the presence of the other physicians I expressed my concern. And Dr. Noback assured me that this was not the case, that we were a group of, as I recall he used the word "distinguished" physicians, and that our recommendations would be seriously reviewed and followed in the final decision that was made about the disposition of Charlotte Horowitz. But, nonetheless, I was concerned.

[30] Q. Doctor, I'm going to hand you now what's been marked Plaintiff's Exhibits 111, 112 and 113, three photographs, and

ask you, do you recognize the person pictured in those photographs? A. This is Charlotte Horowitz.

Q. Do those photographs reasonably portray her as she appeared about the time that you saw her in the spring of 1973? A. Yes, they do.

Mr. Benson: I'd like to offer them into evidence.

Any objection?

Mr. Marvin Wright: Your Honor, I object, the plaintiff is present in the court, I can see no benefit whatsoever from the fact of photographs being offered into evidence.

The Court: I will receive them.

(Plaintiff's Exhibits Numbers 111 through 113 were received in evidence.)

Q. (By Mr. Benson) Was your concern about the review process, Dr. Cohen, suggested in part by the March 15th memo to you and the other doctors from Dean Noback, Exhibit 58, which I've handed to you? A. Yes. I would like to read to you if I may a paragraph— **[31]** well, first of all it was rather strange to me that the person's name was never even mentioned in the memo. I didn't know that we were playing games. I thought that this was a pretty serious matter, and the name Charlotte Horowitz does not appear in the memo, which seemed strange to me. And in—the only place where I can see any charges against this individual, it states that

> "Several topics have been of concern since July of 1972. These are the following: relationships with other individuals; clinical performance; personal appearance and grooming; and the acceptance of suggestions and constructive criticism."

No statement about academic performance scholastic achievement. And at the meeting my concern, too, was more about what her condition of personal hygiene was rather than about her as an individual.

Q. You say your concern was? A. Yes, my concern was that this was emphasized and this was stressed so much that——

Q. By whom was it emphasized and stressed? A. By Dr. Noback.

Q. And are these the reasons that you expressed your concern to Dr. Noback? A. Yes.

Q. Subsequent to this meeting did you agree to act as one **[32]** of the examining physicians? A. Yes, I did.

Q. Why was that? A. Well, Dr. Noback assured me in the presence of the other physicians that the recommendations that we would make would be important ones and that they would weigh heavily, as I understood it, on the decision as to whether she would be—as to what would happen to her at the medical school, kept on, dismissed, put on probation, so forth.

Q. Subsequent to this meeting and your agreement to examine her, did you examine Charlotte Horowitz? A. Yes, I did.

Q. Where did that examination take place? A. That occurred in my laboratory at the Veterans Administration Hospital.

Q. Would you briefly describe the examination that Miss Horowitz and you conducted? A. This examination is—the examination occurred on April the 16th, 1973, it lasted for two and a half hours, from 9 to 11:30 a.m. And what I did was to present to Charlotte Horowitz a series of tissues, of specimens, of photographs, which were taken from a variety of diseases. And I carefully selected these diseases. I'd like to make a point here, if I may, Mr. Benson; I'd heard about the business of Charlotte Horowitz going into psychiatry **[33]** and that this was her primary interest and concern, but my concern was in consonance with the medical school, and that is that a student to graduate should be qualified as a general physician. This is my concern. Therefore, the area in which I examined her dealt with matters of general medical interest. And I didn't examine her in psychiatry. First time I qualified and generally felt this was not my

concern. I wanted to know what she knew about a heart attack and cirrhosis of the liver and things of that sort, at the theoretical as well as the practical level.

So I chose a series of six disease groups which I felt would cover the spectrum of the majority of diseases or a significant number of the diseases with which a physician would come in contact who was in the general practice of medicine. And I'll name them to you because I think they are important, I thought a myocardial infarct, that is, the common term for that is heart attack. Second, I—so this is important because this represents the area of diseases of circulatory insufficiency of which there are a great many, like a stroke, for example, heart attack, gangrene of the lower extremities from occlusion of the vessel to the lower extremities, this constitutes a very important group of diseases with which the physician has to deal.

[34] There there's a large group of diseases which are due to congenital malformations, malformations which occur at birth. And for this I gave her an aneurysm of the brain, so-called berry aneurysm. Then we're more and more dealing with immune diseases and I gave her an example of an autoimmune disease, namely systemic lupus erythematosus.

And then malignant neoplasms, cancer, is an important group of diseases and here I was a little bit biased since I'm interested in the blood and blood-forming organs, I gave her two diseases of blood-forming organs, and I gave her a case of leukemia, chronic lympocytic leukemia and a case of multiple myeloma.

Then the area of nutritional and toxic deficiencies constitute very important diseases so I gave her an example of alcoholic cirrhosis of the liver. And finally, we're recognizing the importance of chromosomal abnormalities in recent years, and I gave her an example of Klinefelter's disease.

Now I felt that a student who is presented this broad spectrum of diseases, not having any idea, I'd never seen Charlotte Horowitz before, and I've scarcely seen her since then, not having

any ideas on what that person was going to be examined, I felt that the way that person would respond to questions about **[35]** these diseases would give me a pretty good idea of what that person's stated knowledge was.

Q. Dr. Cohen, did you reduce the results of your examination to writing? A. Yes, I did.

Q. Handing you what's been marked Plaintiff's Exhibit 65 and ask you if that's a copy of that writing. A. It is.

Q. And to whom is that addressed? A. To Dr. Noback, Dean of the Medical School.

Q. Did you send that letter to Dr. Noback? A. What?

Q. Did you send that letter to Dr. Noback? A. Yes.

Mr. Benson: Your Honor, at this time I'd like to offer Plaintiff's Exhibit 65.

The Court: Any objection?

Mr. Marvin Wright: No objection, Your Honor.

The Court: Be admitted.

(Plaintiff's Exhibit Number 65 was received in evidence.)

Q. (By Mr. Benson) Dr. Cohen, in the course of your examination did you note in Charlotte Horowitz any deficiency in personal hygiene? A. No, I did not. As a matter of fact, I was on guard for **[36]** that, that's a pretty crude kind of a thing, I must admit, that is, crude on my part, having heard about how, you know, how bad this person was I was on the lookout for her.

Q. You say you had heard about how bad she was? A. I mean in terms of grooming, personal hygiene, matters about a brown mark being on her collar, things of that sort, I——

Q. What was the source of this information? A. Well, this came, as I recall, from Dr. Noback.

Q. And you say you were on guard for it? A. Yes, I was on the lookout for any evidence of bad grooming, of being dirty, sloppy, things of that sort. I've dealt with students all my life, most of my life, and so I know what students look like.

Q. Did you note any deficiencies in those regards? A. No, I did not.

Q. Did you note any deficiencies in regard to Charlotte Horowitz' ability to accept any criticism? A. Not with me.

Q. Did you criticize her with regard to some of the answers she'd given you on various aspects of the problems you had presented? A. Yes, I did, there were some answers she did not know and we discussed that.

[37] Q. Was she amenable to your discussions? A. I felt she was.

Q. Did you notice any deficiencies in her ability to relate to you on an interpersonal basis? A. No.

Q. In regard to your assessment of her, how did you overall assess Charlotte Horowitz in relationship to other senior medical students to whom you had been exposed? A. I thought she stacked up pretty well.

Q. At the time you examined her do you know how many months she had been enrolled in medical school? A. I wasn't sure at the time. I knew that she had not been at medical school for a long time as compared to the traditional medical schools, but then I did some calculations myself and I find that she was at medical school about 19—not quite 19 months.

Q. How many months—for how many months are most senior medical students in medical school? A. Well, until recently in most medical schools which were traditionally four-year medical schools, the senior student would be anywhere between 36 and 40 months. Now, of course, there are summer vacations in there and I understand, I'm not sure about

this, but I think at UMKC they forgo the summer vacation, to a large extent, so that the length of time that they spend in medical **[38]** school is more in line perhaps with the other schools. But there are three-year medical schools but the majority of medical schools are four-year medical schools. So the senior student would be somewhere between third and fourth year when that person is a senior.

Q. In the traditional medical school do students have some exposure to clinical practice throughout their four years of medical school? A. Well, in the first year of medical school there isn't much exposure of clinical practice. In the second year of medical school there is beginning exposure to clinical practice. Traditionally the first two years of medical school are called the preclinical years, during which times there are enclosures of anatomy, biochemistry, pharmacology, microbiology, pathology and that sort of thing. And the real exposure to the clinical, to patients who have diseases, to the clinical services is in the third year.

Q. At the time you examined Charlotte Horowitz had she had an exposure to the clinical services comparable to other medical students of her standing in traditional medical schools? A. I don't know. I don't know, I would guess that she probably had not but again I don't know because I did not go into the actual number of months or the type of **[39]** patient she had seen.

Q. After your letter of April 19th, 1973, Plaintiff's Exhibit 65 to Dean Noback concerning Charlotte, did you subsequently learn that she would not graduate in May of 1973? A. Yes, I did.

Q. On learning that information did you contact anyone at the medical school? A. I contacted Dr. Noback initially, immediately, and I was astounded that she was going to be dismissed from school.

Q. When you say contacted Dr. Noback, by what means was that? A. By telephone and by letter.

Q. Did you subsequently meet with him? A. Yes, I did. By the way, I sent a copy of this letter to Dr. Smull, who is chairman of the evaluations committee and to Dr. Dimond who is provost of the medical school.

Q. This letter, you are referring to your April 19 letter? A. No, this letter is dated May 21.

Q. May 21? A. May 21, 1973.

Q. Dr. Cohen, I'm handing you a copy of Plaintiff's Exhibit 75 and ask you if that is the letter to which you are referring. A. It is.

[40] Q. To whom did you send that letter? A. Dr. Noback.

Mr. Benson: At this time I'd like to offer Plaintiff's Exhibit 75 in evidence.

Mr. Marvin Wright: Your Honor, I'll object to it upon the grounds that it's irrelevant to the issues in this lawsuit. We already have in evidence Dr. Cohen's thorough evaluation of this student.

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[41] The Court: I'll receive it subject to the objection but the conclusions—I am assuming that the conclusions stated in that letter are for this Court to decide and not this witness.

Mr. Benson: Yes, ultimately those conclusions are, although the witness may testify as to ultimate facts it is still the decision of the Court.

The Court: Yes.

(Plaintiff's Exhibit Number 75 Was Received in Evidence.)

Q. (By Mr. Benson) Dr. Cohen, subsequent to that letter did you have a meeting with Dean Noback and others? A. Yes, I did.

Q. Who else was present at that meeting? A. Dr. Noback invited me to meet with him and with Dr. Smull, the chairman of the evaluations committee, and with Dr. William Sirridge, who was the docent of Charlotte Horowitz, and that meeting was held at the medical school, University of Missouri Medical School and I agreed to attend that meeting. Dr. Noback invited me to attend that meeting and I agreed to attend it.

Q. What was the substance of that meeting? **[42]** A. The meeting I presume was called because of my—I'd like to make a correction here. I wasn't passing on the evaluations of the other physicians in this instance nor of the evaluation of the medical school. I was astonished and astounded by the decision to dismiss Charlotte Horowitz and I was expressing my concern as an individual. I was not—I was not telling them that they shouldn't dismiss her, I was merely expressing my concern.

Q. At that meeting did you question Dr. William Sirridge as to Charlotte's ability to obtain an adequate history and perform an adequate physical examination? A. Yes, I did. And I did this because throughout this meeting, and I penned some notes or penciled some notes after this meeting on the letter that Dr. Noback subsequently wrote me, he wrote me the next day, the day after the meeting, he wrote me a letter. And on that letter I penned from my recollection, or penciled, rather, from my recollection what transpired at that meeting. And at that meeting Drs. Smull and Noback stressed to me that Charlotte Horowitz would not make a safe physician. So, you know, I think it's nice to define terms. So I asked them both what they meant by safe physician. And at that time at least neither of them was able to define for me what a safe physician is. So, therefore, with Dr. Sirridge there, namely, the docent of Charlotte **[43]** Horowitz, the individual who has had the greatest contact with her, I proceeded to ask him a series of questions which in my mind would indicate whether a person could perhaps make a safe physician, because I've got a knowledge of clinical medicine and I proceeded to ask Dr. Sirridge a series of questions.

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[44] A. Dr. Sirridge indicated to me that Charlotte Horowitz could take an adequate history, clinical history, and **[45]** perform an adequate physical examination.

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[48] Q. At any time did the dean convene you or other members of your panel together to discuss Charlotte Horowitz after your examinations of her? A. No.

Q. Were you or the other doctors, to your knowledge, given any mechanism by which to tally in numerical or other formal method the result of your examinations of Charlotte Horowitz? A. None was given to me and I don't know about the other people.

Q. Do you know if any formal scale for compiling the results of yours and the other six doctors' opinions regarding Charlotte Horowitz was created or constructed? A. I don't know that.

Q. You're not aware of any? A. No.

Mr. Benson: You may inquire.

Cross-Examination

By Mr. Wilkins:

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[49] Q. And isn't it correct, sir, that in the letter to you and the other physicians from Dean Noback, while elements of **[50]** personal appearance or grooming may have been mentioned, there was also very substantial emphasis given to evaluating the competence of this lady? And you may certainly refer to the exhibit if you would care to do so. A. Well, there's one paragraph in the letter as I have it before me in which that is mentioned. I don't know that undue emphasis is placed on that. You said considerable emphasis. It says,

> "The school is making—asking the clinicians to conduct a fair, careful, and searching assessment of this student's present competence by spending several hours with

the student as she examines one or more patients in your presence and as you and she discuss the cause, manifestations, pathophysiology, course, and management of the problems of the patient or patients."

I think that's the only paragraph in which such is stated.

Q. Well, you took that to mean that the school was in fact interested in your objective and searching and fair evaluation of her competence? A. Yes, that is correct.

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[55] MARJORIE SPURRIER SIRRIDGE,
called as a witness on behalf of the plaintiff, having been previously sworn, testified as follows:

Direct Examination

By Mr. Benson:

Q. Would you please state your name. A. Marjorie Spurrier Sirridge.

Q. Are you a physician? A. Yes, I am.

[56] Q. How are you employed, Dr. Sirridge? A. I am docent and professor of medicine at the University of Missouri School of Medicine.

Q. Here in Kansas City? A. That is correct.

Q. How long have you been so employed? A. I went to the school in—well, full time in July of 1971 when the school opened.

Q. When did you obtain your medical degree? A. October 1944.

Q. From what institution? A. University of Kansas.

Q. Have you had any advanced or specialty training since obtaining your degree? A. Yes, I have.

Q. What is that? A. I had internship training at the Charity Hospital of Louisiana in New Orleans, I had postgraduate training at the Cleveland Clinic in Cleveland, Ohio, at Bethany Hospital in Kansas City, Kansas, and the University of Kansas Medical Center.

Q. What is the area of your specialty training? A. My area has been primarily that of hematology which is a subspecialty of internal medicine.

Q. Have you had any other appointments with medical **[57]** education institutions other than the UMKC Medical School? A. I held a clinical appointment at the University of Kansas from 1955 until 1971.

Q. Other than docent and professor at UMKC do you hold any other appointments at UMKC Medical School? A. No.

Q. Are you a member of any committees or other official bodies of the medical school? A. At the present time I'm a member of the Council of Docents. I have previously served on the Council of Selection for the medical school and on the Coordinating Council.

Q. During the period of time from the fall of 1971 till late spring of 1973, a period during which Charlotte Horowitz was at the medical school, did you serve on any of those committees? A. Yes, I was on the Council of Selection and the Coordinating Committee at that time. Also the Council of Docents.

Q. What was the function of the Coordinating Committee during the time that you served on it? A. This Coordinating Committee was to bring together problems or needs that were established in each of the other councils. The other councils included evaluation, **[58]** curriculum and selection. And the Council of Docents. And it's obvious that by separating the

duties of these four councils it became necessary to have a coordinating body so that when there were problems that were interrelated between and among these councils that a group might come together and the Coordinating Council was made up primarily of representatives, two from each of the councils, which was the reason I was serving. I was serving as a representative of the Council on Selection.

Q. As a practical matter were recommendations of the Council on Evaluation concerning the promotion or grading or dismissal of medical students brought before the Coordinating Committee? A. Yes, they were.

Q. Is that a routine matter? A. Yes, it was.

Q. Did you serve on the Coordinating Committee while Charlotte Horowitz' status was brought to the Coordinating Committee from the Council on Evaluation? A. Yes, I did.

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[60] Q. What is a primary physician? A. A primary physician is a physician who devotes his or her time to the primary care of patients, be it pediatric patients, geriatric patients, adult patients, that he has almost total patient contact, and that rather than being in a laboratory he is primarily involved in utilizing medical information as it relates to patient care.

Q. And is that the aspect of emphasis at the medical school at UMKC? A. Yes, it is.

Q. How do you define the term safe physician? A. I'm not sure I can define it today exactly as I defined it in my deposition but I shall try. My feeling is that a safe physician is a physician who has a sufficient amount of information and skills to care for a **[61]** significant percentage of the patients that are in his or her practice group. That he also has sufficient information to know when he is unable to care for the patient and a willingness to refer the patient, when such referral is necessary.

Q. Does the concept of a safe physician include the acquisition of a certain quantum of knowledge or information? A. Indeed it does, sir.

Q. What methods are students normally measured to determine whether they have acquired that quantum of information and knowledge? A. Well, over the years the traditional method has been the written examination, which is obviously very inadequate when we're dealing primarily with clinical science. Also traditionally in medicine students have had oral examinations, they have been observed when they are dealing with patients, they've been asked to solve problems and they have been observed in their day-to-day routine and evaluated by people with experience in the areas in which the evaluation is occurring.

Q. Were you ever an instructor of Charlotte Horowitz? A. Not a primary instructor, I was a docent on the unit which she was on for her second year. She was not primarily my student. However, there were a few **[62]** occasions on which I did indeed supervise her work in the outpatient department. I at no time supervised her work in the inpatient care of patients.

Q. Other than your occasional supervision of Charlotte Horowitz what sources of information did you have concerning her progress through the medical school? A. Only the official sources which were brought to the Coordinating Committee from the Evaluating Committee who had access to her evaluations. I had no personal access to her evaluations.

Q. What were some of those formal matters that were brought from the Council on Evaluation to the Coordinating Committee? A. Well, obviously when letters went to Charlotte concerning the fact that there was great concern over her progress, this was related to the Coordinating Council because this was part of the minutes of the Evaluation Council, and the Coordinating Council was so appraised each time a value judgment was made by the Evaluation Council. Now, I do

not remember the exact dates nor the exact wording of the statements. Likewise, when the problem came up about whether or not she should graduate, this was very openly discussed in the Coordinating Council.

Q. Was the dean a member of the Coordinating Committee? A. He is the chairman of the Coordinating Committee.

[63] Q. Do you know if the dean was a member of the Council on Evaluation? A. No, me is not a member of the Council on Evaluation.

Q. Do you know if he attends or is an unofficial member of the council? A. I do not know this.

Q. Who transmitted the information from the Council on Evaluation to the Coordinating Committee? A. This was transmitted via minutes which were sent to all of us, we all received the minutes, with the exception of some of the minutes that were held in executive sessions, these were not distributed by mail but this information was transmitted by the chairman of that council to the Coordinating Council.

Q. Other than the minutes and the copies of the letters which went to the students, what other types of written information was available to the Coordinating Committee? A. None that I'm aware of.

Q. What types of oral presentations were made to the Coordinating Committee? A. These varied tremendously if there were problems with individual students, a student's docent or adversary might conceivably come to a meeting and give a statement or a person might be asked to evaluate. I don't remember precise instances.

[64] Q. At any time in which Charlotte Horowitz was being considered by the Coordinating Committee, did her docent appear before the committee? A. Not at any time that I attended a meeting.

Q. Did anyone else on her behalf attend any of the meetings? A. Not that I'm aware of.

Q. Do you recall whether Dr. Smull attended any of the meetings of the Coordinating Committee at which Charlotte Horowitz was discussed? A. He was regularly, he was on the Coordinating Committee, as chairman of the Council of Evaluation he was a regular member and regular attender at that council.

Q. Would it be a correct statement to say that the Council on Evaluation makes recommendations which do not become effective until they are either ratified or vetoed by the Coordinating Committee? A. That's correct.

Q. It would also be correct to say that the policies adopted by the Coordinating Committee become school policies unless they are vetoed by the dean because of reasons that he deems to be in the best interests of the school? A. That's correct.

Q. Practically speaking, then, is the Coordinating Committee the final decision that's made with regard to a student? A. Yes, it is.

[65] Q. Do you know on how many occasions matters concerning Charlotte Horowitz were brought to the attention of the Coordinating Committee? A. I do not know exactly, no.

Q. Would it be more than three or less than three? A. I'm sorry, sir, I simply couldn't give you a proper number.

Q. Do you know who brought these matters to the attention of the Coordinating Committee concerning Charlotte Horowitz? A. Well, these primarily came in the form of executive committee minutes from the Evaluation Committee.

Q. Was the matter brought to discussion within the Coordinating Committee by the member of the Coordinating Committee or by the dean or Dr. Smull? A. I think officially all of these pieces of information were introduced by the Evaluation Com-

mittee via their minutes. I don't remember, the other discussions were initiated by other people.

Q. The minutes of the Council on Evaluation are somewhat cryptic, are they not? A. There are formal minutes of the Evaluation Committee which are, as I mentioned, mailed to all members of the—minutes of the Evaluation Committee that are mailed to all of us. There are other minutes which are executive **[66]** minutes which for very obvious reasons are not going to be distributed by mail anywhere. Now, these minutes were usually read to the Coordinating Committee by Dr. Smull or one of his designated representatives at a meeting of the Coordinating Committee. This is to protect students. It's obvious that we don't want any kind of information being circulated in a way which might be detrimental to students.

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Q. Do you recall from your experience on the Coordinating Committee any instances of students being asked to repeat a year of medical school? A. I'm sorry I don't recall, there are instances in which students have been decelerated, some of these instances have been by the student's own request. I do know, since I was not on the Coordinating Committee, that other students have been decelerated, but I simply do not have specific information.

Q. What do you mean by decelerated? A. That means they might be asked to spend an additional year before moving forward in the program. When this program was initiated it was generally thought that the average student could encompass the whole program in six **[67]** years. It was obviously also well understood that there might be some student who would need seven or eight years, and I don't think any of us have ever thought that every student was going to be the same in the way he or she could proceed through the prorgam.

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Q. Was this universal he in effect asked to spend an additional year at the medical school if his progress was decelerated? A. I think there's more than one student that has been asked to do this, has been asked to spend an additional year. But as I say, this has been part of the concept from the beginning, that there might well be needs for students to do this. I would hope that we would be able to continue to do this always. This also happens in traditional medical schools.

Q. Do you know what types of factors were considered in making the determination to ask this student or other students to decelerate or spend an additional year at the medical school? A. I do not remember specific factors. I mean, I suppose **[68]** I could sit here and reiterate things that I think would be important but I don't think that's what we're talking about here today.

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Q. Dr. Sirridge, the clerk is handing you Plaintiff's Exhibit 78, admitted into evidence, minutes of the Coordinating Committee executive session, June 4—excuse me, I meant to ask you about June 4, 1973. I'm referring your attention to page 6. On that page the minutes include the statement,

> "Dr. Sirridge suggested that all faculty, staff, and examiners have been prejudiced in dealing with Miss Horowitz from the beginning date of her medical education."

First, are you the Dr. Sirridge whose statements are being summarized? **[69]** A. That's correct.

Q. Your husband is a doctor at the medical school, is he not? A. That's right.

Q. And was the plaintiff's docent? A. That's correct.

Q. Is that summary of your statement accurate? A. Yes, it is, sir.

Q. What did you mean by use of the phrase prejudiced? A. I felt that the prejudice that had existed in this school stemmed

from the fact that Miss Horowitz did not exemplify what a lot of the faculty and staff felt they would like to see in a female physician. And so because of the fact that she did not exemplify what they felt they were looking for in her appearance, her behavior and her attitudes that they were thus prejudiced.

Q. These differences between expectations of the faculty and the reality of the student, what was the source of those differences, do you know? A. It's been my experience in general that the expectations that people have for women in medicine tend to be rather stereotyped. And I think that one as a woman physician finds oneself continually being pressed to be excellent in all areas, and I think we not only feel ourselves pressed but pressured to appear to be very well dressed and well groomed, to do our jobs extremely well, and that **[70]** if we don't we tend to have more criticism exerted on us than do male students. And this is mainly because for most of my experience in medicine women have been a minority in medicine and it's been very easy to pick out the female student who doesn't look the way we think she ought to look, when she's one among 90 you may miss several of the males but it's rather difficult to miss the females.

Q. Dr. Sirridge, did you serve on the Selection Committee at the time the advanced students were first admitted to UMKC? A. Yes, I did, sir.

Q. Did you sit in on the interview of Charlotte Horowitz? A. I did not.

Q. Did you sit in on the committee sessions that reviewed the applications when decisions were made? A. This is correct.

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[71] Q. Like to hand you what has been marked Plaintiff's Exhibit 15 and I apologize somewhat for the lack of quality of the reproduction but ask you if you can recognize that. A. Yes, I do.

Q. What is that? A. This is one of the structured interview forms which we were using at that time. And this is, the applicant's name is Charlotte Horowitz and the interviewer is V. Calkins.

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[72] Q. (By Mr. Benson) I'd like to refer you to the last page to some handwritten summary by Miss Calkins and ask you if you would read that summary. A. (Reading) "The candidate's personal appearance is against her—her interests in medicine are in psychiatry—wants to teach in a med school—she has a slight speech impediment—I don't believe she fits our program."

Q. Now, did you take that statement into consideration at the time the committee was deliberating as to whether she should be admitted? **[73]** A. I am sure we did.

Q. So the school was aware of some potential problem with regard to her personal appearance? A. This is correct.

Q. And the fact that she may not have fit the stereotype expected of a female medical student? A. This is quite right.

Q. And there was some at least advance knowledge that she may have had a speech impediment or a heavy accent? A. That's correct.

Q. Are those the types of matters that you were referring to when you stated that Charlotte Horowitz did not meet the stereotyped expectations of a medical student? A. That is correct.

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[74] Q. (By Mr. Benson) Dr. Sirridge, do you believe Charlotte's physical appearance was a drawback to her through the medical school? A. Yes, I do.

Q. Does an unattractive physical appearance interfere in the clinical practice of medicine? A. Yes, it does.

[75] Q. Does physical appearance—is physical appearance an appropriate standard by which to measure a safe physician? A. No.

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[76] Q. (By Mr. Benson) Dr. Sirridge, you have indicated that you believe that Charlotte Horowitz did have some problems because of her personal appearance, is that correct? A. Yes, sir.

[77] Q. And also because of her sex because she did not meet the stereotypes expected of female students? A. What I'm saying is that I believe the physical appearance of a female in medicine has a great deal more to do with her acceptance and her ability to deal with the setting than it does for the male in the same setting.

Q. So the concept of her sex and the personal appearance were combined? A. In a sense they were, because physical appearance is more important in a woman than it is in a man in medicine. At this time. I'm not sure this is going to be true in the future but at this particular point in time that's true.

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[78] Q. As a member of the Coordinating Committee were you aware of any particular appeal process available to students to have reviewed decisions concerning their status in medical school? A. Yes.

Q. And what were the appeal procedures that were available? **[79]** A. Well, the appeal procedures, the one that I'm most familiar with, of course, is the one that Charlotte chose to use, the one in which an appeal was made at graduation time when graduation was denied, an appeal for a separate evaluation of her capabilities other than the ones which were at that time in the hands of the Evaluation Committee. I'm sure that there is always the availability of appeal of a student, and I think this is nearly always done through a student's docent. In other words, if a student receives a probationary report

from the Evaluation Committee, usually at the time such a thing happens the student's docent is invited to come to the meeting of the Evaluation Committee to discuss this. So that at least the docent can understand it if it is a considered decision. Just recently I appeared on behalf of a student who had not been given probationer status but what is called as having been flagged, which is perhaps a problem, so I appeared at the Evaluation Committee to make a statement on behalf of the student, because I felt it was an unfair action. And so I became the student's ombudsman at the meeting of that committee in the hopes that the committee would change its mind before it made its statement.

Q. You say you're most familiar with the appeal Charlotte Horowitz took. Now, that was an appeal from the **[80]** notification in February of 1973 that she would not graduate in May? A. That's correct.

Q. And it was to a panel of seven examining physicians? A. There was an actual definitive appeal set up. The other appeal that I'm talking about is one that is open to us, we don't necessarily have to take it, but it's open to me, I don't even ask the student, if I get a report on the student then I have the prerogative if I think it's an unfair decision to go and say, "I think you've judged this student unfairly."

Q. The appeal process that Charlotte Horowitz utilized, do you know whether that procedure had preexisted her decision to appeal? A. Yes, it had preexisted.

Q. And it had been formalized in any type of document or writing? A. I'm not sure it had been formalized in a document but the appeal process was in the plan of the school, that if a student chose the student could request a separate evaluation. Now the exact formal way in which this was going to be accomplished I'm sure had never been worked out because it had never needed to be worked out before.

Q. As a member of the Coordinating Committee, do you know whether the results of this appeal process were **[81]** advisory or binding or what was to be done with the result of the—— A. I'm not sure it was considered to be advisory because the final decision was with the Coordinating Committee.

Q. And to whom was the advisory opinion to be given? A. It came to the Coordinating Committee but it did not come in the form of direct reports by the physicians. We did have access to the letters which the physicians wrote which, and I think these were all addressed to the dean, however, we had access to the reporting letters. I read the letters.

Q. Now, the decision that she not graduate in May was made by the Coordinating Committee in December of '72, is that correct, December 26th? A. I do not remember the exact day.

Q. About that time period? A. I assume so, I don't know for sure.

Q. And that Charlotte Horowitz took an appeal from that decision? A. Yes.

Q. To a panel of seven examining physicians, is that correct? A. Yes.

Q. And they each wrote reports which became advisory? A. That's right.

Q. And those advisory reports were given to the Coordinating **[82]** Committee through the dean? A. That's correct.

Q. So the appeal was really from the Coordinating Committee to the Coordinating Committee? A. The appeal that Charlotte made was to the school to be reexamined. The body which conducted this, essentially, or was responsible for making the final decision was the Coordinating Committee.

Q. From whose decision she had appealed, correct? A. That's correct. She appealed the decision of this committee, this committee gave her another way to obtain information that might make them change their mind.

Q. So it wasn't really an appeal, it was a reconsideration with new evidence? A. Reconsideration, I think that's a good way to put it. That's right.

Q. Do you know if any procedures or rules or policies at the medical school had provided for direct input from the student into the deliberations of either the Council for Evaluation or the Coordinating Committee in terms of appearances or submitting documents? A. I'm sure the student would have the privilege of requesting, these are, in general, council meetings are open, with the exception of the time when the council elects to meet in executive session. Any student in the **[83]** medical school can go to any council meeting and all the student would need to do would be to go.

Q. When the status of a student is being considered that's always done in executive session, is it not? A. Usually done in executive session. But I'm sure if the student wished to come to one of these meetings that could be put in writing to the committee or council.

Q. That has never been the practice at the medical school, has it? A. I don't know. I really don't know this, I've not served—we didn't have this problem in selection which is the council I served on and I don't believe a student ever requested permission to attend the Coordinating Committee in executive session.

Q. Jut so that we're all clear, Charlotte Horowitz was in the first class admitted to medical school, was she not? A. That's correct.

Q. And she was admitted as an advanced standing student? A. That's right.

Q. Although it's a six-year medical program, when the school was beginning it was contemplated that she would only have

two or at the most three years to complete her—— A. The reason these students were admitted with what was called advance standing was because there was no way to know how long it would take an individual student because **[84]** their backgrounds were quite varied, it was thought that some of these students, and actually some that were admitted with advanced standing took four years, there were some that took four and some that took three and some two and some that graduated in 18 months which is the approved period of time which was utilized by the University of Miami for MD candidates who were admitted to their school.

Q. For non-MDs who were admitted to your medical school, the expected minimum period of time they would have to spend in your time was two years before they could graduate, was it not? A. I'm not even sure that's correct. I would suspect more nearly three. It would depend a great deal on what their backgrounds were.

Q. Weren't there some 9 or 10, maybe 12 students admitted with Charlotte Horowitz, most of whom graduated two years later? A. There were, this is right.

Q. And the two-year course of study for that class of students was the, expected of the norm for that class, is that right? A. For the group of students many of whom were MD students or had medically related background specialties, such as one student who was an oral surgeon, another student **[85]** who had had two years in another medical school, some students who had had two years in dental school, I mean these were all students with advanced medical information backgrounds.

Q. And two years was the expected course of study for them? A. It was projected that this would be and this was based on the experiment which was started at the University of Miami.

Q. And Charlotte Horowitz did not have such an extensive medically related background, did she? A. That's correct.

Q. She didn't have an MD? A. She did not.

Q. And hadn't been involved in such areas as oral surgery and so forth? A. That's correct.

Q. So if anything her expected tenure at the medical school would have been at least equal to or perhaps longer than the other students admitted in her class? A. I think one could have anticipated that it might have been, yes.

Q. Beg pardon? A. I think one could have anticipated this though there was no way to know or predict.

Q. And Charlotte Horowitz' tenure at the medical school was **[86]** not extended, was it, beyond the two years? A. It was not.

Q. She was dismissed at what would have been the second complete year in medical school? A. That's right.

Q. Just two more questions, Dr. Sirridge. Are students notified by the Coordinating Committee when their status is beginning to be discussed at meetings at executive sessions of the Coordinating Committee? A. I do not believe so.

Q. And does the Coordinating Committee publish an agenda that's published at medical school that lists the students whose status is being discussed? A. No.

Mr. Benson: You may inquire.

Cross-Examination

By Mr. Marvin Wright:

Q. Dr. Sirridge, are you here in court today by reason of subpoena being served upon you? A. Yes, sir.

Q. Dr. Sirridge, would you explain to us what a docent is? A. The word docent comes from the Latin word docēre, which means to teach. It was adopted in this medical school to describe a rather unique physician who has as his or her charge

the planning and implementing of the **[87]** medical education of a group of students, approximately 12. This implies not only the curriculum planning for these students but spending three months a year with these students in the area of internal medicine as a specific teacher of inpatient and outpatient medical care in addition to what I have just said.

Q. And the docent, I assume, is the advocate for the student? A. This has been in the plan what we have been calling ombudsman.

Q. Ombudsman, advocate, teacher? A. That's right.

Q. Fine. Dr. Sirridge, it is true, is it not, that your husband, Dr. William Sirridge, was the docent for Charlotte Horowitz? A. That's correct.

Q. And I think isn't it also true that Dr. William Sirridge spent many, many hours with Charlotte Horowitz in her medical education? A. I think he was very generous in the time that he gave in helping her do her planning and educational —helping her educational experience and implement it.

Q. And I think that you would agree that he is a competent teacher? A. Extremely good teacher.

Q. And that he is a fair individual? **[88]** A. Fair, yes.

Q. Who is not biased or prejudiced against his students? A. That's correct.

Q. Now, Dr. Sirridge, isn't it also true that the medical school at UMKC is a very open school as far as student criticism, complaints, suggestions which can be made to the school by the student? A. Far more open than most schools.

Q. Dr. Sirridge, in respect to your definition of a safe physician which you gave on direct examination, am I correct in assuming that one must have the basic clinical skills before they can be classified as a safe physician? A. There are certain clinical skills without which one cannot be a safe physician.

Q. Now, isn't it also correct that the Academic Plan, the goal, of your medical school is to graduate safe physicians? A. That's correct.

Q. But at the same time the school does not include people who do research, do they? A. No.

Q. Since you do research yourself, is that correct? A. That's correct.

Q. Dr. Sirridge, the manner of acquiring the basic clinical skills comes about mainly through clinical rounds and **[89]** working with docents and medical professors, isn't that correct? A. With residents and with other students who have skills.

Q. And of those individuals, the teachers who are in the position to make an evaluation as to whether or not an individual is competent in clinical skills and judgments? A. You mean the people with whom the student spends——

Q. Yes. A. Certainly.

Q. The ones that are observing? A. Correct.

Q. Because it is my understand that there is no way that the National Board examinations can tell you whether or not a doctor is competent clinically. A. I think the board examination can tell you some things about a patient's ability to solve problems on paper, but it can tell you very little about the patient's ability to solve problems in a clinical setting.

Q. You mean the doctor's ability to solve problems in a clinical setting? A. That's correct.

Q. Now, Dr. Sirridge, it is my understanding that the Coordinating Committee of which you are a member, you say you openly discussed the situation of Charlotte Horowitz' academic performance each time the matter came **[90]** before you? A. That's correct.

Q. And it is my understanding that each time that the matter was openly discussed I would assume that that committee

was very diligent in the manner in which it pursued the consideration of the deficiencies which were alleged to Charlotte Horowitz? A. Diligent in the sense that it, I think, very carefully considered the information which it received.

Q. Now, Dr. Sirridge, in May or June of 1973, do you have an opinion as to whether or not Charlotte Horowitz was a safe physician within the requirements for graduation of your school? A. I considered that she should not be graduated at that time and I so voted.

Q. In other words, it was your opinion that Charlotte Horowitz was not a safe physician? A. That's correct.

Mr. Marvin Wright: I have no further questions, Your Honor.

Redirect Examination

By Mr. Benson:

Q. Dr. Sirridge, you say that in May of 1973 it was your opinion that Charlotte Horowitz was not at that time a safe physician, is that correct? **[91]** A. That's correct.

Q. And should not graduate? A. That's right.

Q. Did you have an opinion as to whether she should be continued in the medical school for—— A. I voted that she be given the opportunity to continue.

Q. For a period of time in the medical school? A. That's right.

Q. Now you also stated that you believed that the Coordinating Committee had been diligent in that it carefully considered information that it had been provided? A. That's correct.

Q. Was there some quantum of information which you believed it had not been provided? A. What I was trying to say was we dealt with information that came to us, we did not deal

with Charlotte individually, everything that came to us came to us as reports from the Evaluation Committee, from the evaluators that were appointed. There was never a time at which this committee discussed this situation with Charlotte or with the evaluators. I'm simply saying that this was dealt with in the Coordinating Committee from the reports that the Coordinating Committee had requested and had received.

[92] Q. And the Coordinating Committee didn't have the advice or suggestions of Charlotte Horowitz' docent, he did not appear before the committee? A. Not at any of the meetings that I attended. Now, I don't have all the minutes and I have not reviewed the minutes, if he did it could have been a meeting that I—I was a very regular attender but obviously I may have missed some meetings so if that information is available that may be inaccurate.

Q. You attended the meetings at least in December of '72 when it was voted that Charlotte not graduate and in May, early June of '73 when she was dismissed from the school? A. That's correct.

Q. And at those meetings there was a substantial amount of discussion I presume in the committee as to what course of action to pursue? A. There was.

Q. And your husband, her docent did not appear as her advocate? A. Not at those meetings. Now I think he appeared as her advocate at the Evaluation Committee.

Q. But it was the Coordinating Committee that was making the final decision? A. On the recommendation of the Evaluation Committee. Because the job of the Evaluation Committee is to **[93]** evaluate.

Q. Was there any other information besides the information that might be provided by Charlotte Horowitz herself or information that might have been provided by her docent or that you believed was not available to the Coordinating Committee

when it made its consideration? A. I think all the information was available that had been recorded. I think all recorded information was available to us. Personal contact information was not available. It was not considered to be necessary by the committee, apparently.

Q. Dr. Sirridge, providing some sort of informal hearing or opportunity at the Coordinating Committee either for Charlotte Horowitz to appear or for her docent or both of them to appear, that would not have in any way impaired the mission of the medical school to meet its goals and purposes, would it? A I think this would have been a decision of the dean, not of myself to make, he was the chairman of the Coordinating Committee. And I think he had the prerogative of making the decision about whether this was appropriate or not. And I'm sure he had meetings with Charlotte and her docent and perhaps other people.

Q. At the meetings of the Coordinating Committee, did the dean and Dr. Smull and others take part in the **[94]** discussion as to the various alternatives? A. I don't remember the exact people that took part in each of the discussions. I think the whole committee felt free to express itself. I think these things were discussed quite openly.

Q. If there had been meetings between the dean and Charlotte Horowitz or others, is it your testimony that the substance of those meetings were conveyed to the—— A. Verbally, yes, I think so.

Q. And who conveyed those? A. The dean. If the meetings were with the dean.

Q. So to the extent that the dean conveyed any responses that Charlotte Horowitz may have given to criticisms and so forth, they were carried through the subjective processes that we all experience when we relate one conversation to another,

isn't that correct? A. I have no opinion on that. I have no opinion on how much subjectivity is involved in this.

Q. It would have been susceptible anyway to the normal subjectivity involved in the interpretation of content when one conversation is related to another person? A. Anything is susceptible to that, sir.

Q. And having provided an opportunity for the student and her docent to appear at the committee and speak for themselves would not have materially impaired the **[95]** functioning of the Coordinating Committee, would it? A. I can't make that value judgment.

Q. Beg your pardon? A. I cannot make that value judgment.

Q. Is it a value judgment or a question of fact——

Mr. Marvin Wright: Your Honor, I would object to counsel arguing with his own witness, this is his witness that he called.

The Court: Proceed.

A. The reason I say I can't make the value judgment is because of the structure of the council and as the dean as chairman of this council. And I think had the student specifically requested to appear before the council and been denied this privilege, then I think one might make a statement, be able to make a value judgment. I do not have that information, that's why I say I cannot make the value judgment. I think the dean felt in his own mind that any meeting that had been needed to take place had already taken place, and apparently the student didn't question this.

Q. (By Mr. Benson) The students didn't know that their status would be considered from time to time by these various committees, did they? A. Oh, yes, they knew that they had to be considered because this is the only way they can advance through the **[96]** school.

Q. But they didn't know—— A. The specific date, no, but they knew they would be considered every year.

Q. And the results don't provide for the attendance of the students at these executive session meetings when their status is being considered? A. No. Not that I'm aware of, anyway.

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[97] Q. (By Mr. Benson) Yes. Dr. Sirridge, you have in your hand Plaintiff's Exhibits 111, 112 and 113. Are those photographs of the plaintiff, Charlotte Horowitz? A. Yes.

Q. Do they reasonably portray her as she appeared in the spring of 1973, approximately? A. I think so.

Q. In terms of her physical appearance in regards to which it does not meet the stereotype, that which you spoke earlier, is that exemplified in those photographs, to a **[98]** certain extent? A. Yes, it is.

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[99] **WILLIAM THOMAS SIRRIDGE,**
called as a witness on behalf of the plaintiff, having been previously sworn, testified as follows:

Direct Examination

By Mr. Benson:

Q. Will you please state your full name. A. William Thomas Sirridge.

Q. Dr. Sirridge, by whom are you employed? **[100]** A. University of Missouri School of Medicine at Kansas City.

Q. You are a medical doctor, are you not? A. I am.

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[101] Q. What is the title of your appointment at the UMKC Medical School? A. Professor of medicine.

Q. What are your functions as a professor of medicine? A. As professor of medicine I'm also senior docent and I have a group of students assigned to me as well as three other teams. As a docent unit then I oversee other doctors and 50 students.

Q. What is the function of a docent at the medical school? A. Function of a docent is to be a teacher as well as an ombudsman and a personal representative of the student to usher him through the curriculum of the university.

Q. In the course of your teaching experience at UMKC did you have occasion to be an instructor to Charlotte Horowitz? A. I was her docent throughout her career there.

Q. Do you consider yourself to be the one teaching physician at the medical school who had the most contact with Charlotte Horowitz during her careeer? A. That is correct.

Q. Prior to beginning classes in the fall of 1971 did you **[102]** receive a list of the students who would be assigned to your docent unit? A. Not until late August.

Q. Did you ever endeavor to learn something about the background of the students who were assigned to your docent unit? A. None, excepting hearsay.

Q. Did you early in the months of the fall of 1971, did you attempt to tailor the medical school curriculum to meet the needs of the students as you perceived their strengths and weaknesses? A. Not in the fall of 1971. No one knew any of the others. We all went on a docent rotation and it was after this period of three months of internal medicine that we then started making options of what students should do.

Q. During the course of that three-month rotation in the fall of 1971, was that when you first became acquainted with Charlotte Horowitz's background? A. That is correct.

Q. At that point in time did you become familiar with her previous training at Barnard College and Columbia University and Duke and her employment at the National Institute of Health? A. Daily.

Q. Were you aware of her high scores on the graduate record **[103]** exams which she had received? A. Repeatedly.

Q. Did you have access to her resumé which had been a part of her application? A. I have no doubt that I would have had access to it but I never looked at it.

Q. But you were aware that she had done considerable amount of work in the area of psychopharmacology at the National Institute of Health? A. Yes, sir.

Q. And she had assisted in the preparation of a number of research studies, some published and some unpublished? A. Yes, sir.

Q. On how many occasions did you formally evaluate Charlotte Horowitz's performance at the medical school? A. Formally on at least two occasions.

Q. What were those two occasions? A. At the end of each docent rotation.

Q. Did you at the end of the first docent rotation, did you note any shortcomings or substantial deficiencies that Charlotte Horowitz had with regard to peer relationships? A. I think it would be difficult in retrospect to give a definitive answer. Yes, I think there were some difficulties at that time.

Q. What was the source of some of those difficulties? **[104]** A. Well, I'm a little reticent to point out specific incidents because it does involve students and I am not influenced by peer review, peer remarks, because after all, those are in the context somewhat of competition and I think they should not be used and I did not use them.

Q. In deposition testimony which has been offered in evidence in this case by deposition of Dr. Chris Dennis, Chris was a student at the UM Medical School at the same time Charlotte was, was he not? A. He was.

Q. And was he for a period of time on the same docent rotation under you as Charlotte Horowitz? A. On the second.

Q. On the second rotation? A. He was not on my rotation the first three months in school.

Q. And the second time Charlotte was on your rotation he was a part of that? A. He was.

Q. On page 7 of his deposition when asked to describe Charlotte Horowitz in terms of her relationship with her peers, her classmates, he answers, "She was the class joke." Did you perceive aspects of that when Charlotte was under your tutelage at the medical school? **[105]** A. I wouldn't make it that strong and I don't think he could document it.

Q. If that was overstated to a certain extent was his observation correct? A. I think so.

Q. In part was this difficulty that she had with her classmates part, in part do you believe that was caused by her physical appearance? A. I think it might have been.

Q. You heard your wife's testimony here this morning, did you not? A. I did.

Q. And your wife indicated that she believed that Charlotte had some difficulty because her appearance did not fit the stereotypic role of the woman in medicine. Do you recall approximately that testimony? A. Yes, I do.

Q. Do you concur in that judgment? A. Yes, I do.

Q. Do you believe that was a part of the difficulty that Charlotte had in terms of her peer relationships as Chris Dennis has described them? A. I do. I could elaborate in the fact that Charlotte was overweight. On rounds Charlotte was al-

ways the last in the room, she was always last in line. And it's that **[106]** type of thing that apparently he's referring to. But by no means do I think that's concrete evidence to judge a medical student.

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[107] Q. After Charlotte completed her first rotation with you in the fall of 1971 she then went into an independent study for the month of December, is that correct? A. Correct.

Q. And then went into another rotation in January and February, I don't recall which one, but in March and April she went to pediatrics, did she not? A. Correct.

Q. In the course of rotations of students away from their docent did you receive periodic or occasional evaluations of that student's progress? A. I did get an evaluation and a communique from Dr. Herbert Wenner. That incidentally is the only teacher on any elective of any student that I have ever had a communication sent to me in four years.

Q. I'm showing you what's been offered into evidence as Plaintiff's Exhibit 21 and ask you if that's a copy of the communication to which you refer? A. It is.

[108] Q. You say that communication is the only written communication you received from a doctor on another rotation concerning a student of yours? A. That is correct.

Q. Did you discuss this letter with Charlotte Horowitz when you received it? A. I made a written report to Charlotte Horowitz in handwriting.

Q. How long was the pediatrics rotation at this time? A. Two months.

Q. And when did it begin? A. Well, you just stated that she had a study month in December and if she had another rotation in January and February it must have begun the first of March and run through April.

Q. So this letter dated March 22nd was sent approximately three weeks into rotation? A. That is correct.

Q. And it was about an eight-week rotation? A. That is correct.

Q. Doctor, I'm now handing you what has been marked for identification as Plaintiff's Exhibit 22 and ask you if that is a copy of your handwritten note to Charlotte Horowitz? A. It is.

[109] Q. That you referred to earlier concerning the Wenner letter? A. That is correct.

Q. From what you can determine from that copy is that an accurate copy of your handwritten note? A. It is.

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Q. (By Mr. Benson) Now, the handwriting is somewhat hard to read, primarily because of the quality of the copy and not because of the doctor's handwriting. Wonder if you would briefly read what you wrote? A. Yes. It is from the desk of Dr. W. T. Sirridge. It is dated 3-23-72. And it says,

"Charlotte, watch out!

Shape up!

Sharpen up!

Clean up!

Be alert!

Be on time!

This has been seen by Carmen, Smull, Wenner and myself and by no one else."

With my signature.

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[111] Q. Do you know whether Charlotte Horowitz received a notation of credit on her record for having completed the pediatrics rotation? A. I don't remember.

Q. Did you receive any other documents in writing concerning her performance in the pediatrics service at the conclusion of her stay there? A. I did but I don't have them in my possession and I don't recall.

Q. Did you receive them considerable time later or immediately after the completion of the rotation? A. I can't tell you the time I get them. Occasionally we never get one off, we always do from pediatrics, the time period will vary.

Q. As far as you know while Charlotte was enrolled in the medical school she never saw these letters from pediatrics, you never showed them to her, did you? A. It's difficult for me to answer because at this point a student sees all the evaluations after he receives his evaluation. At that time students wrote evaluations and I'm not sure whether they saw their evaluations or not.

Q. If Charlotte does not recall having seen her evaluations **[112]** is it likely at that time that she perhaps did not see her evaluations? A. I think it's entirely likely that she did not see it.

Q. So she would not have been advised as to the content of those evaluations until some considerable period later? A. I'm not sure on the interval and the time later.

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[113] Q. Since that time a number of students have either extended their stay at the medical school or been decelerated as was described earlier today? A. That is correct.

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Q. Doctor, I'm handing you what's been offered into evidence **[114]** as Plaintiff's Exhibit 36. Is that the letter of probation of July 5th, 1972? A. I think it is, sir.

Q. Do you note in that letter the reasons that were stated that Charlotte was placed on probation? A. Yes, sir.

Q. What are those reasons? A. Would you like for me to read the second paragraph?

Q. Just where they're listed. Is the first one clinical competency? A. It says,

> "Your acquisition of information is good. Your relationship with others has not been good and represents a major deficiency. You need to improve your relationship with others rapidly and substantially. This involves: keeping to established schedules; meeting all clinical responsibilities on time and gracefully; attending carefully to personal appearance including hand washing and grooming; participating appropriately in the activities of the School; and directing criticisms and suggestions maturely to your Docent and to the faculty member who is in charge of a curriculum block as you may have criticisms and suggestions."

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[120] Q. Doctor, as of the summer of 1972 would it be correct to say that Charlotte had progressed satisfactorily in terms of the acquisition of knowledge and had performed well scholastically and academically? A. Not if one includes the pediatric rotation. She had done well in pathology and anatomy, didactics, and had done satisfactorily on the docent unit.

Q. Primarily had her deficiencies been behavioral? A. Her deficiencies were behavioral enough and she requested that she be allowed to take a psychiatric rotation at the Menninger Clinic, which she did.

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Q. I'll probably get to that, Doctor. In the course of Charlotte's two years at the medical school her status was considered a number of times by the Council on **[121]** Evaluations, was it not? A. It was.

Q. At least three, perhaps four times. A. I would guess that's correct, yes.

Q. Do you recall on at least one occasion Charlotte speaking to you concerning a possible appearance by her before the Council on Evaluation or the Coordinating Committee? A. I do not. But anyone who knows the rules of the school knows that any student at any time can attend any council, not the Coordinating Committee and not in executive session. The student always has access to their student representative on every council, including the Coordinating Committee, but no student has ever appeared before the Coordinating Committee nor has any docent.

Q. Now has any student appeared before the Council on Evaluation when the council was in executive session, isn't that correct? A. Not as far as I know. I couldn't answer.

Q. When you refer to the rules of the school, the rules of the school do not provide for a student to appear before the Council on Evaluation when it's in executive session, do they, unless invited? A. I don't think a student would be allowed in the executive session if it were pertaining to that student. I do not **[122]** know.

Q. That's what I'm referring to, when that student's status is being considered at the Council on Evaluation that student could not appear unless invited? A. I would think not, I have never been on the Council of Evaluation. But it should be pointed out that that student at all times has two student representatives who are in that executive session of which she has free access.

Q. And Jerry Burton was one of the students, was he not, during Charlotte's time? A. He was. That's correct.

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[123] Q. Doctor, you were aware of some strong feelings of animosity between Jerry Burton and Charlotte Horowitz, were you not? A. Correct.

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[125] Q. I'm going to hand you what has been admitted into evidence as Plaintiff's Exhibit 39 and ask you if you recognize that. A. I do.

Q. Would you describe it? A. It's re Charlotte Horowitz.

[126] "To Whom It May Concern:

There is no official transcript of our medical studies, at present, as we have not finished our first full year. However, Miss Horowitz has the highest academic standing in the class. She has passed the National Boards. She is a Year VI student, that is, fourth year in medical school in our system, and will graduate in June of this year."

Q. What is the date of that? A. August 10th, 1972.

Q. That was slightly more than a month after she was placed on probation, is that correct? She was placed on probation I believe by letter of July 5, 1972. A. That's correct.

Q. And you say in that letter, I presume that was a letter of recommendation? A. It was a letter of recommendation for Charlotte to get a residency around the country. At that time I had no doubt that she would correct her deficiencies in the next year and indeed graduate.

Q. And at that time you say she had the highest academic standing in the class, is that correct? A. I think that's true.

Q. And she had been placed on probation, however, so would it be correct to say that she had been placed on probation **[127]** not for academic or scholastic reasons but because of behavioral reasons? A. She was not placed on probation because of didactic concepts and facts. She could be placed on probation from other services because of competency and problem solving as well as behavioral qualifications.

Q. From the documents we have been listing such matters as peer and patient relations, patient rapport, personal appearance, personal hygiene, acceptance of criticism and so forth, were

those the major behavioral items that caused her to be placed on probation? A. At that time, plus the pediatrics rotation which is an established part of the course curriculum. Then I'm sure you will ask those— –

Q. Those are the major reasons for her being placed on probation, is that correct? A. Is the pediatric rotation plus behavioral qualifications of which there are five—six out of nine.

Q. And those behavioral problems continued to be substantial problems for Charlotte at the time she was reevaluated in December of 1972, is that correct? A. That's correct.

Q. And they continued to be problems for Charlotte at the time she was being considered for removal from school in the late spring of 1973, isn't that correct? **[128]** A. I think that's fair.

Q. And between the time she was placed on probation and the first of May 1973 she had performed satisfactorily in an academic or scholastic sense in each of the rotations, had she not? A. As far as I recall.

Q. She had received credit for them, in the fall she had been in your docent rotation again? A. And had definitely received credit.

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[130] Q. She did. So from the time she was placed on probation until May 1st, 1973, she presumably received credit for having performed satisfactorily in all her rotations in terms of the academic or scholastic aspects in any event, is that correct? A. As far as I know.

Q. The only problem that continued are the behavioral problems that we listed earlier? A. Correct.

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[132] Q. Is it likely that Charlotte was in fact prejudiced by her appearance and her sex at the medical school? A. I don't

know how you would really quantitate that but I suspect that's true.

Q. You believe it's likely? A. I think it's likely.

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[142] Q. Dr. Sirridge, did the Coordinating Committee at any time ever ask you for your opinion as to what disposition should be made regarding Charlotte's status in the spring of 1973? A. No.

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[144] Q. In the spring of 1973, had you been asked by the Coordinating Committee as the docent for Charlotte Horowitz for an opinion as to what disposition should be made regarding her, you would have been prepared to give your opinion, would you not? A. I would but it would have been redundant since I had already made it as you've documented several times.

Q. And what was that recommendation? A. I read that I would recommend her for a residency, and I did indeed recommend her for graduation.

Q. You are now referring to your June 9th, 1972, letter? A. Yes.

Q. And that would have been your same recommendation in May **[145]** of 1973? A. It would have been.

Q. Had you been asked by the Coordinating Committee for it? A. I had already stated the opinion, but I would have made it to the Coordinating Committee had they asked me.

Q. Do you know why Charlotte Horowitz was dismissed from the medical school when at least one other and possibly more medical students had been allowed to extend their stay at the medical school to acquire skills or to make up deficiencies? A. I do not know.

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[147] Cross-Examination

By Mr. Marvin Wright:

Q. Dr. Sirridge, you were the docent for Charlotte Horowitz from the time she started her medical education at UMKC, is that correct? A. Yes, sir.

Q. And at the time that Charlotte started to medical school in September of 1971 it was known that she had a basic interest in basic sciences, is this correct? A. Yes.

[148] Q. But at that time did you ever inform her that she did not have to be clinically competent to graduate from your school? A. At no time.

Q. You informed her that she would have to be a safe physician? A. I did indeed inform her on innumerable times that she would have to finish the corps curriculum.

Q. Now, Dr. Sirridge, would you say that you spent a reasonable amount of time with Charlotte Horowitz in trying to help her correct her deficiencies? A. Yes, sir.

Q. Now, in your two periods of time when she was on a docent rotation, was that contact with Charlotte Horowitz, I assume it was daily for a period of two to three months? A. Each rotation was a three month time, Charlotte was absent for short periods of time in the second rotation.

Q. Now, Dr. Sirridge, it's my understanding that your evaluation of her in her second docent performance after observing her in the clinic was the fact that Charlotte Horowitz was unsatisfactory when it comes to clinical skills? A. That is correct.

Q. Dr. Sirridge, you refer to her academic standing, her academic proficiencies several times in some communications **[149]** that Mr. Benson has pointed out. And isn't it correct that you utilized the term academic in those communications referring to her book knowledge? A. Right, fact and concept.

Q. There's no question but what Charlotte Horowitz can read a book? A. No question.

Q. And learn what's in that book? A. She can do it very well.

Q. As a matter of fact, that is the problem with her medical education, that she thought she could be a doctor by just reading a book, isn't it? A. That is correct.

Q. As a matter of fact, she would not get involved in patient care and try to learn the skills, would she? A. Well, not to a full extent. It couldn't be stated that far, Charlotte did see patients, both in-patient and out-patient, she did the bare minimum in both occasions and never volunteered for any extra help or extra seeing patients.

Q. But she did not seek out the opportunity to learn to do clinical skills? A. That is correct.

Q. She didn't seek out additional opportunities to learn to problem solve in respect to diagnosis of patient, did **[150]** she? A. That is correct.

Q. Dr. Sirridge, did you discuss with Charlotte Horowitz on numerous occasions the exact deficiencies and what could be done to correct them? A. I think I did.

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[152] Q. But, Doctor, the point remains just to the basic question of whether or not she met the requirements for graduation in the school of being a safe physician, she was not? A. She was not.

Q. All right. Now, Charlotte Horowitz had known since July 5th, 1972, of her deficiencies in clinical skills? A. Correct.

Q. And she had not corrected those deficiencies? A. Apparently she did not correct them.

Q. So for a period of roughly ten months the medical student had not corrected the deficiencies which you numerous times had pointed out to her. Correct? A. Correct.

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[157] Q. Were any adjustments made in the curriculum for Charlotte Horowitz during the year in which she was on probation prior to being dismissed? A. She had certain curriculums. She decided to take an independent month of study for the second time. And I advised that she take a rotation to acquire skills. I informed her each time, which is a matter of record, of my sending to each professor, OB-GYN, surgery, as well as emergency room, that Charlotte was indeed deficient and I would indeed appreciate their help.

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[171] Q. And you acknowledged earlier, did you not, that Charlotte's personal appearance as has been described by Chris Dennis as being unattractive on a scale of 1 to 10 as being 1, that that personal appearance could interfere with her ability to perform clinical skills, is that correct? A. That's correct.

Q. And you heard the testimony earlier this morning where she was admitted into the medical school with the advance knowledge that her personal appearance may very likely be an impediment to her functioning at the medical **[172]** school, is that correct? A. I would have thought so but I was not on the Council of Selection and I did not select her.

Q. You would have thought that it would have been disqualifying? A. If I had read Miss Calkins' note that was read this morning, which I did not know existed, she would not have been admitted, in my estimation.

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[186] **RICHARDSON K. NOBACK**

Direct Examination

Q. You heard Dr. Sirridge, Bill Sirridge's testimony today, did you not? **[187]** A. Yes.

Q. And he said he thought it was unlikely that she had been notified, at least through him, that her progress in pediatrics had been deemed unsatisfactory. Do you recall that? A. I heard him say that.

Q. Do you know of anything to the contrary? A. I do know that one of the responsibilities of the docents is to keep the students informed of their progress.

Q. Now, Dr. Noback, also in the standard pretrial order number 2 in paragraphs 36, 37 and 38 are evaluation reports of plaintiff's performance in pediatrics rotation submitted by Drs. Wenner, Drehr and Grunt. Similarly do you know whether those evaluation reports were provided to plaintiff? A. I'm not sure.

Q. Those reports, however, were in her files when her status at the school was being considered by the Council on Evaluation, were they not? A. Yes.

Q. And if she did not know they were in her files she did not have an opportunity, one, to rebut them, did she? A. That's correct.

Q. Or, two, she did not have an opportunity to request an opportunity to repeat the pediatrics rotation if it had **[188]** been deemed unsatisfactory, did she? A. That would be correct. I would point out that in the usual exercise of academic judgment the faculty meet and go over the grades and the faculty evaluations.

Q. Normally students know whether they pass or fail a course, do they not? A. That's correct.

Q. At the time they complete the course or within a reasonably short period thereafter? A. That's right.

Q. In this case it appears, does it not, that Charlotte believed she had received a credit for pediatrics on the transcript you're holding? A. That would be correct.

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[198] Q. Does not Dr. Crockett say that "It is my recommendation that she be required to continue in the School of Medicine on probationary status for one more year"? A. That's right.

Q. And yet you interpreted that as being his opinion that she should be dismissed from the medical school? A. No, no, that's a fundamental point. The first issue and the fundamental issue under appeal is whether Miss Horowitz would graduate in May of 1973 or whether she would not graduate in May of 1973. And on that the letters are extremely clear, five, one, one.

Q. In terms that she not graduate? A. In May of 1973.

Q. Did you make any tally effort to determine whether or not there was a recommendation that she be dismissed from the medical school? A. The issue at the time in question was the appeal from the information that she would not graduate in May of 1973.

Q. And the result? A. Is the five, one, one. Five said that she should not——

Q. Not graduate? A. Was not ready to graduate in May of 1973.

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[199] Q. And by your own administrative guidelines you were to determine, pursuant to what is Plaintiff's Exhibit 59, whether there was a majority opinion among the three areas of recommendation, is that correct? A. I repeat that until we get to May of 1973 the question of dismissal was not before the school.

Q. It was before the seven examining doctors, was it not? A. That's right. And they could find, Mr. Benson, the **[200]** intent of this is to say that they might find any of those particular three items. But the fundamental question is May 1973, graduation or not, that's what was being appealed.

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Q. Dr. Noback, two doctors suggested that she be dropped immediately, isn't that correct? A. That's correct.

Q. And two doctors, Dodge and Cohen, said she should graduate, is that correct? A. That's correct.

Q. And the other four presumably came in the—excuse me, the other three presumably came in the other category of probation or some other reevaluation, isn't that correct? A. They're unsure as to what should happen in May of 1973.

[201] Q. So with regard to the three categories of choices you gave them there was no majority opinion on any one of them, isn't that correct? A. I would say that is correct but that was not the fundamental issue at the time. I keep repeating and repeating, the issue at the time was the appeal from the prior judgment that she would not graduate in May of 1973.

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[202] Q. (By Mr. Benson) Dr. Noback, I'm offering you what has been marked for identification as Plaintiff's Exhibit 70. Ask you if you can identify that. A. It's a letter from me to Miss Horowitz on December 7th.

Q. Is that informing her it has been decided not to graduate her? A. That's correct.

Q. And does it say at some future time it will be decided if she will be dismissed from the medical school? A. That is not stated here but from many discussions that was known to all of us.

Q. And at the time this letter was sent out by you had the seven examining physicians essentially completed their review of Miss Horowitz? **[203]** A. I think that's correct.

Q. And had the Council on Evaluations acted upon their opinions and made a recommendation? A. The Council on Evaluation had acted on their report with respect to the graduation in May of 1973. On that issue.

Q. And the Coordinating Committee had adopted that recommendation and made it school policy, is that correct? A. They had accepted the recommendation and forwarded it to me. When I accepted it I acted for the university and it became policy.

Q. Either on May 11th or sometime immediately prior to it? A. That's right, I think it would have been sometime between May 7th and May 11th, if my memory is correct.

Q. And was that the conclusion of the appeal process? A. That's correct.

Q. Was the opinion as you interpret it of the seven examining physicians binding in any way on either the Council on Evaluations or the Coordinating Committee? A. No, not binding.

Q. Advisory? A. That's right. To repeat points made earlier today, the school asked for the most thoughtful evaluation and said that the school would use it in a most thoughtful and deliberate way. But a faculty cannot turn over to even its own subgroups or appeal groups the ultimate academic **[204]** decision, it has to be held within the faculty.

Q. This has been referred to, this procedure, as an appeal by Charlotte Horowitz, has it not? A. Yes, Mr. Benson.

Q. It actually was not an appeal to another body from the determination of the Coordinating Committee, was it? Wasn't it more a request for reconsideration with new information? A. I guess the answer to that really depends on our definition. And I make that not as an attempt to play with words, we viewed it as an appeal with new information for a reconsideration.

Q. But the same body was still ultimately making—— A. That's correct, the same bodies were evaluating the new information.

Q. And the only input Charlotte Horowitz had into that process was her attendance at the offices of the seven examining physicians for examination, isn't that correct? A. That's correct. I would like to add the point that a seven half-day performance evaluation is a very substantial one and in extent is quite similar to that for American Board certification, for example, so that it is a substantial investment of Miss Horowitz's time and of the physicians and of the school.

Q. And Miss Horowitz was not provided with copies of the **[205]** letters from the seven examining physicians, was she? A. That's correct.

Q. Prior to the time she was dismissed? A. You are correct.

Q. To the extent that there might be any factual discrepancies, if any exist, between what is reported in those letters or not reported and what occurred, no opportunity was provided to Miss Horowitz to point out those discrepancies, was she? A. That is correct.

Q. And as of May 11th the decision had been made that she not graduate but a decision had not been made as to whether she would be dismissed? A. That is also correct.

Q. When was the decision made that she be dismissed? A. Again I could look in my notes here, I believe it is approximately May 28th, between May 28th and early June.

Q. And did the Council on Evaluations meet to make a recommendation in that regard? A. That's correct, Council on Evaluation, and then the Coordinating Committee of the school.

Q. And what information did the Council on Evaluation review at that meeting? A. The full information in her file, the reports from the rotations, which would have included obstetrics

and **[206]** gynecology, surgery and the emergency room. The information through the completion of her curriculum.

Q. Did the council also review the reports of the seven examining physicians? They were in her file, were they not? A. They were in the file. I would have to check the minutes on that particular point.

Q. Presumably they were reviewed, were they? A. I would expect they were. But again that's I'm sure in the minutes.

Q. So the Council on Evaluation would have met towards the end of May 1973, reviewed information in addition to the three normal categories of evaluation forms, quarterly exams and docents' recommendations, isn't that correct? A. As you include the results of the seven physicians, yes.

Q. And the topic for consideration was retention in the school or dismissal? A. That's right.

Q. Did the Council on Evaluation call Charlotte Horowitz in for an interview on that question? A. No, it did not.

Q. Do you know why she was not called in? A. It has not been our practice to call students in. The reason for that is that as the faculty considers any particular student and the records of the school, by **[207]** custom faculties make their decisions and do not have students present when the faculties are making that decision. I use the faculties because that is the practice with which I am familiar in the various schools in which I've had a part.

Q. And that's in spite of the directive of November 22nd, 1972, specifying that the Council on Evaluation shall exercise its responsibility to call in a student when it considers information beyond the three normal categories? A. No, the directive at the fall of the year says that the council, as we've said from the time that school began, may ask for evaluations in addition to those that are customarily in place. At least that's my memory of it.

Q. I'm handing you again Plaintiff's 46, directing your attention to numbered paragraph 7. The short paragraph, I believe it's the third paragraph says,

> "It is from these evaluation forms, from the quarterly examinations, and from the Docent's recommendations that the Council on Evaluation forms its opinion."

That's the three categories of information we've talked about? A. Right.

Q. And you've already indicated that the Council on Evaluation considered at least as a fourth category, that **[208]** being the result of the seven examining physicians, correct? A. Correct.

Q. The next paragraph reads,

> "If, in spite of the above information, the Council on Evaluation finds itself operating without adequate information, it has the responsibility of calling the student forward for interview."

In your interpretation is the use of the phrase "responsibility" discretionary on the part of the council? A. There are two points I'd like to make in answer to your very keen question. The first is that as I read this, this places in the case of any particular student a clear responsibility on the Council on Evaluation to call the student forward for interview and examination as the council feels the council does not have adequate information. My interpretation is that in this instance the council did not feel that the council lacked any information necessary to reach a reasoned, deliberate, thoughtful judgment.

The second point that I would make is that in a series of meetings that go back to the summer of '72, Miss Horowitz, her docent, the chairman of the Evaluation Council and I met to discuss concern and to try to be **[209]** useful and helpful. So my conclusion would be that, A, there was not a need in May of 1973 for the council to collect more information, and, B, that we had been operating since the summer of 1972 to meet

with the student and to try to avoid the disapopinting outcome that we reached.

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[212] Q. Did you discuss the topic of Charlotte's extended stay at the medical school with the provost, Dr. Dimond? A. I believe that I did. Yes, I know we discussed this, yes.

Q. Pursuant to that letter? A. That's right.

Q. Do you know why a determination was made that Charlotte Horowitz was not provided an extended stay at the medical school? A. Yes, Mr. Benson. The judgment was that Miss Horowitz had been with us from July, the end of June and early July of 1972, through May of 1973, which period of time represents more than a usual full medical school year, and had not been able to accomplish those things that were necessary. In view of that we saw no profit, in fact—I'll stop there, no profit in extending beyond that point.

Q. Dr. Noback, Charlotte Horowitz had been at the medical school at the time she was dismissed for the expected period of time that she would be there as viewed when she was admitted, correct? Let me phrase it this way, when she was admitted she was expected to have an opportunity to graduate at the end of two years, is that correct? **[213]** A. That's a yes but question, Mr. Benson. The experience in 1971 with students who like Miss Horowitz who had substantial advanced preparation beyond that of the usual premedical program, that experience in the United States was limited. I made it a point to tell all of the students who joined us in her category that we would do our best at the end of approximately six months to identify at what level in the school each of those advanced standing students placed. As we've heard earlier today a number of those students were placed at our Year V level so that within that set of qualifications we would have expected Miss Horowitz to be able to accomplish the necessary things in two academic years.

Q. And she did not and she was dismissed, correct? A. That's correct.

Q. Other students have been, as Marjorie Sirridge described, decelerated in their progress through the medical school, is that correct? A. Yes, sir.

Q. The practical test of that is to extend their stay at the medical school? A. That's correct.

Q. And the purpose of such action was to allow medical students to obtain skills they otherwise did not have? A. A variety of items. This may involve skills, it may **[214]** involve concepts, it may involve facts, it may involve putting them all together into the integrated performance which we call clinical competence. There are a mix of reasons for a deceleration decision. I should point out that the great majority of the few students who have been decelerated have had that deceleration take place at Year I or Year II of the six-year program.

Q. Did Charlotte Horowitz have the right to appeal from the decision of the Coordinating Committee that she be dismissed from the medical school? A. Have the right to appeal. My judgment was that she had exercised her right to appeal the judgment about graduation in May of 1973. The matter of staying or leaving school was a decision and I suppose this is the appeal that she has from that, the reason we're here today.

Q. You say her only source—she had no other administrative remedy, if she sought an appeal it had to be to the courts, is that correct? A. We told her the decision to drop her from the school was a firm decision.

Q. A final decision? A. That's right. She asked for review as you know within the academic structure of the health sciences and asked for a review by the provost for the health sciences, **[215]** who is the university agent to whom I report directly, and had that additional review or appeal, if you would define it as an appeal. And I'm here a little bit hung up on the lan-

guage, but there was that additional formal step that she engaged in and to which she had a response from the office of the provost.

Q. The only formal appeal she had was from the December 26th, 1972, decision not to graduate her in May of '73 and she exercised that appeal? A. She exercised that formal appeal.

Q. Is that correct, that was the only formal appeal she had? A. Well, let me say that, I've tried to make the point, that she also asked for a review of the judgment of the school from the supervising academic officer for the health sciences and had a response to that request. I'm not sure whether legally that it defined as an appeal or not.

Q. You say after she was dismissed she wrote to Grey Dimond and he wrote back saying, "Sorry, this is the end of the road, that was the final decision"? A. I think his letter in fact said that he carefully reviewed all of the evidence, all of the procedures, and supported the decisions by the council, the committee and the dean.

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[216] Q. (By Mr. Benson) The decision of the Coordinating Committee in May of '73 to expel her from the school was a different decision, was it not? A. Please help me, different from?

Q. From the December 26th decision not to graduate her in the spring. A. Yes, sir, that's right, they are separate decisions made at separate times.

Q. Because the first decision left open the possibility that she stay in school? A. That's correct.

Q. And the second decision in May ended that by expelling her? A. The first decision in December of 1972 stipulated that Miss Horowitz would have to make very, very, very marked improvement in order to continue in school.

Q. And the second decision in May of 1973 with regard to that, Charlotte Horowitz was not given notice of the time and

place at which that decision would be made by the committee, was she? **[217]** A. That is correct.

Q. And she was not allowed to attend that session at which that decision was made? A. That is correct. And I add the point that in the academic process faculties meet and faculties make decisions and within my experience it is not customary for students to be there.

Q. And she was not allowed to present documentary or written evidence since she wasn't advised of when the meeting was going to take place, isn't that correct? A. That's correct, Mr. Benson.

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[218] Q. And there was no appeal from that final decision, no final appeal that involved another hearing? A. That's correct, not an appeal that involved another hearing, but a review by the office of the provost.

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[219] CHARLOTTE MURIEL HOROWITZ

called as a witness on behalf of the plaintiff, having been previously sworn, testified as follows:

Direct Examination

By Mr. Benson:

Q. Will you please state your name. A. Charlotte Muriel Horowitz.

Q. Charlotte, are you the plaintiff in this case? A. Yes, I am.

Q. Have you received your undergraduate degree? A. Yes, I have.

Q. Where did you obtain that? A. Barnard College, which is part of Columbia University.

Q. And what degree did you receive? A. Bachelor of arts.

Q. And when was that? A. 1961.

Q. Did you have graduate training after that? A. Yes.

Q. Where was that? A. At Columbia University, then at Duke University, and later at the National Institute of Health.

Q. Did you obtain any advanced degrees? A. Yes, I have a master of arts degree from Columbia.

Q. In what field? **[220]** A. Experimental abnormal psychology.

Q. Have you been employed in the area of experimental psychology since your obtaining of that degree from Columbia University? A. In psychopharmacology.

Q. Where were you employed? A. At the National Institute of Health.

Q. How long were you employed at NIH? A. Five and a half years.

Q. What was your course of—what was the topic of your employment? A. I started out as a research psychologist and then transferred to a group that was specializing in clinical psychopharmacology.

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[221] Q. This has already been offered into evidence as Plaintiff's Exhibit 6. When did you receive this document? A. I read it in January of 1971.

Q. Was that prior to the time you applied to UMKC? A. Yes.

Q. Was there anything in particular in that exhibit which caught your attention regarding the UMKC Medical School? A. Well, I thought the whole arrangement of having small classes and the docent system was a good arrangement. I was particularly interested that the school said, and in column 2, the second full paragraph, subsection (d), it says,

> **[222]** "to provide the student with a relevant clinical or basic science model with which he can identify and to which he can aspire."

Q. Did you attach particular importance to that phrase? A. Yes, I felt that this meant that basic science was put on an equal footing with clinical subjects.

Q. Did you have an interest in basic science? A. Yes, I did.

Q. What was that interest? A. In biochemistry, pharmacology and particularly in pschopharmacology.

Q. Did you have any interest in becoming a primary care psysician? A. No.

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[229] Q. Did you go on and complete the pediatrics rotation? A. Yes.

Q. Did you receive any information as to whether you had satisfactorily completed the rotation? A. Dr. Sirridge told me I had completed it and passed the **[230]** course.

Q. Did you get credit for having completed that rotation? A. Yes, I did.

Q. How do you know you got credit? A. It's on my transcripts.

Q. Did Dr. Sirridge inform you whether or not you had gotten credit? A. He just told me I had passed.

Q. At the time you completed the pediatrics rotation or shortly thereafter did you receive any written evaluations or communications concerning your performance in pediatrics? A. No.

Q. Did you ever see any written evaluations concerning your performance in pediatrics? A. Not until after the lawsuit started.

Q. Prior to the time you were dismissed you had not seen the written evaluations? A. That is correct.

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[235] Q. When did you first learn that your progress through medical school had been deemed to be less than satisfactory by the medical school? A. When I was put on probation in July of '72.

Q. When did you receive that letter? A. I actually received the letter at the end of July but it was dated July 5th.

Q. Why was that delay? **[236]** A. The letter was sent in care of a doctor at the Menninger Hospital and the doctor was on vacation.

Q. Did you learn whether the Council on Evaluation had met prior to the issuance of this July 5th letter? A. I did not know that the decision about probation stemmed from the Council on Evaluation. I thought it was a personal decision of the dean.

Q. Have you ever been invited to attend a session of the Council on Evaluation? A. No.

Q. Did you know that the Council on Evaluation was meeting in December 1972 to evaluate your continued status on probation? A. I knew it was going to meet sometime in December or January.

Q. Were you advised to when it was going to meet? A. No.

Q. With regard to the Coordinating Committee did you know it was going to meet to review the recommendation of the Coordinating Committee in 1972? A. Yes, I was told they would review it.

Q. Did you know when they would meet? A. No.

Q. Did you understand whether students were allowed to attend those meetings? **[237]** A. I understood that the meetings were closed to students.

Q. Did you discuss the question of attendance at these meetings with your docent? A. Oh, yes, Dr. Sirridge told me they might call me to a meeting. And then he told me later, no, they won't.

Q. To your knowledge has any student attended a meeting of either the Council on Evaluation or the Coordinating Committee? A. The council has two student meetings but other than that no student has attended their meetings. And Coordinating Committee, no students.

Q. When did you first learn of the meeting of the Coordinating Committee—excuse me, when did you first learn of the action taken by the Coordinating Committee on December 26th, 1972, concerning your status at the medical school? A. Oh, wait, that was Evaluation on the 26th of December. Coordinating was middle of January.

Q. When did you learn that the Council on Evaluation had recommended that you not graduate? A. It was around, on or about January 25th, 1973, on a Thursday.

Q. And how did you learn that? A. I was called to a meeting with Dr. Sirridge, Dr. Smull and Dr. Noback and was informed at this meeting.

Q. Who informed you? **[238]** A. Dr. Noback.

Q. Were you told what reasons had been advanced for your not graduating in May of '73? A. I was given the reasons of personal appearance, peer relations, clinical competence, and I believe there was a fourth one.

Q. Ability to accept criticism? A. Yes.

Q. Were you given any specifics with regard to what manner you needed to improve your peer and patient relations? A. No. specifics.

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[239] Q. Was the option of taking an appeal discussed at this meeting in late January 1973? A. Yes.

Q. Was the appeal procedure that would be available to you described? A. No.

Q. Prior to this time had you read the Academic Plan? A. Yes.

[240] Q. Had you seen the newsletter in December which included the reference to the amendment or the addition to the Academic Plan? A. Yes.

Q. At this meeting in late January of 1973 did you ask what type of appeal mechanism would be set up? A. I think I asked Dr. Sirridge after the meeting and he told me, "I don't know, it's never been told before."

Q. Do you know where the mechanism for this particular type of appeal came from? A. It came from a memo from Dr. Dimond in November of 1972.

Q. What decision were you offered the opportunity to appeal from? A. To request my graduation in May of 1973.

Q. You were appealing from the decision that you not graduate? A. Yes.

Q. Had there been any discussion as to the possibility that you might be dismissed from the medical school? A. No.

Q. Did you have any hesitation in requesting the appeal? A. I felt I had no other alternative.

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[241] Q. When did you learn what the form of appeal was going **[242]** to be? A. March 15th, 1973.

Q. How did you learn? A. In a letter from Dr. Noback.

Q. Pursuant to that letter were you required to take any steps to initiate the appeal? A. Yes, I was supposed to contact the seven doctors involved.

Q. Did you do that? A. Yes, I did.

Q. Did you make appointments with the seven doctors? A. Yes.

Q. Were you seen by each one of the seven doctors? A. Yes.

Q. Where did you see those seven doctors? A. In their offices, generally speaking.

Q. Did you have an opportunity to review the evaluations or the reports that those seven doctors prepared for you? A. No.

Q. Did you know that they were making reports and preparing evaluations? A. I knew they were writing letters.

Q. To whom? A. To Dr. Noback.

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[243] Q. When the reports were received by the dean from the medical school, were you notified? When the reports were received from the seven examining physicians were you notified? A. Not when they were received but later on I was notified, after the Coordinating Committee had considered them.

Q. How were you notified? A. I was asked to come for an appointment with Dr. Smull and Dr. Sirridge and Dr. Noback.

Q. Do you recall what date that was? A. That was the—I believe it was May 7, 1973, on a Monday afternoon.

Q. And what was the purpose of that meeting? A. To tell me that it had been decided that I would not graduate on time.

[244] Q. Did they tell you by whom that had been decided? A. By the Evaluation Council and the Coordinating Committee.

Q. Did they tell you when those committees had met? A. They told me that the Coordinating Committee had met that afternoon.

Q. Had you been advised in advance of the meeting of the Coordinating Committee that afternoon? A. No.

Q. Had you been advised in advance of the meeting of the Council on Evaluation earlier that month? A. No.

Q. Was anything said to you at this meeting on May 7th with regard to your dismissal from medical school? A. I was told that there would be a meeting in a few weeks by the Coordinating Committee and the Council on Evaluation to decide if I would remain in school or not.

Q. What were you expected to do during those intervening weeks? A. Worry about it.

Q. Did you? A. Yes.

Q. Were you invited to attend the meeting of the Council on Evaluation that considered your possible dismissal from the school later that month? A. No.

[245] Q. Did you know about it in advance? A. No. I knew they would be meeting but I did not know when.

Q. And were you invited to attend the Coordinating Committee? A. No.

Q. Did you know the time and place of their meeting? A. No.

Q. When did you learn that it was the decision of those committees that you be dismissed? A. On July 3rd, 1973.

Q. And how did you learn that? A. In a meeting with Dr. Noback and Dr. Smull and I think my attorney was present and myself.

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Q. In the time intervening between the end of May when the committees were meeting and early July when you were informed of their decision, had you communicated anything to the medical school with regard to your willingness to **[246]** remain in the medical school? A. I told Dr. Noback that I would be willing to spend three months or a little bit longer to remedy whatever skills I was deficient in if the school felt I was deficient in skills.

Q. And did you communicate that to him in writing or orally? A. In writing.

Q. Did you receive any response to that communication? A. No.

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[259] Q. Do you know whether your grading and evaluation was in any way influenced by your failure to meet the stereotypic sta;ndards for female medical students? A. Yes, I think there was some of that.

Q. What was the source of that? A. You mean to give examples?

Q. Yes. A. In obstetrics I was criticized on my evaluation form for the way I dressed. On the blood bank evaluation form I was criticized for my personal appearance.

Q. Were either of those criticisms made specific? A. No more specific than I've made them.

Q. Just generally personal appearance? A. The obstetrics evaluation just said, "The way she dresses leaves a doubt as to her future as a physician."

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[297] Q. Moving then on into January of 1973, along towards the end of the month or at least some time during that month **[298]** you received the third official written notice to you, being the February 7th letter—or being confirmed by the February 7th letter from Dr. Noback concerning the fact that you would not be graduating in May? A. No. That was the second notice. The first was in July.

Q. I'm sorry. I am incorrect. The first written notice being the letter of Dr. Wenner was not an official one from the dean. A. Yes, that's right.

Q. That was in March of '72? A. The Wenner letter?

Q. Yes. A. Yes, March of '72.

Q. Then in July of '72 was the official letter from the dean? A. Yes.

Q. And then in February of '73 was the second official letter from the dean? A. Yes.

Q. And you were notified in that letter, weren't you, that the Council on Evaluation and the Coordinating Committee felt your progress was not sufficient to show the improvements called for in the letter you'd been given seven months earlier, back in July? A. That's what the letter said.

[299] Q. And the letter advised you you were being continued on probation? A. Yes.

Q. Would not graduate in May? A. Yes.

Q. And you were also told in that letter that to continue in school after May you would need very substantial and marked improvement in a number of specific areas? A. Yes.

Q. Had you had a meeting before getting this letter of February 7th? A. Yes.

Q. Was that in January? A. Yes.

Q. And Dean Noback was there? A. Yes.

Q. And Dr. Smull? A. Yes.

Q. And also Dr. Sirridge? A. Yes.

Q. So you knew in January that there was a serious question about your continuing in school after May. A. Yes.

Q. Did you, whether you agreed or not, understand the phrasing of the various elements set forth in that letter **[300]** where you were going to need very substantial and marked improvement? A. You'll have to read it to me. I don't have it in front of me.

Q. Well, was one of the areas clinical competence? A. That was mentioned in the letter.

Q. You were told and understood that you would need substantial and marked improvement in that? A. I was told I had to acquire more skills.

Q. Was another element peer and patient relationships? A. That was mentioned.

Q. Personal hygiene was mentioned? A. I believe so.

Q. And ability to accept criticism was mentioned? A. Yes.

Q. Did you believe there was any merit at all in the suggestion of that letter that you had not made sufficient progress in clinical competence? A. Well, I had never been told in the July letter that my clinical competence was in issue. This was the first time it came up.

Q. Wasn't your clinical competence put into issue or into question clear back with the letter of Dr. Wenner in March? A. I'm talking about the letter I received from the dean in **[301]** July. It was not mentioned in that letter.

Q. Well, what I'm asking, though, Miss Horowitz, didn't you know, going back as far as March '72, that questions were being raised about your clinical competence? A. I knew one person had questions.

Q. Dr. Sirridge had told you to shape up? A. Yes.

Q. Did you feel at the time—withdraw that. Did you place any significance at all on the fact that in July you had been placed on probation? A. Well, I remember being upset about it.

Q. Well, did you take that as being a serious indication to you that you did need to improve? A. I felt I needed to improve and to get better, but all medical students need to improve constantly throughout medical school.

The Court: July of what year?

Mr. Wilkins: July of '72.

Q. (By Mr. Wilkins) Did you believe at the time of the meeting in January of '73 and the letter you received in February of '73 that you needed improvement in your clinical skills? A. Now, which—you are talking about the January letter now?

Q. Well, the letter I think, ma'am, is actually dated February 7th. **[302]** A. Yes, that's the letter I mean. I felt that I had to improve my clinical skills. That was told to me.

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[321] Q. With regard to your clinical skills, Charlotte, did—were you led or encouraged by anyone to believe that your clinical skills were minimally adequate and that you would be able to graduate? A. Dr. Sirridge told me that my skills—he felt I could graduate.

Q. Did he tell you why that was? A. He told me that he felt that it wasn't necessary for me **[322]** to learn skills that I would not need to use in the field that I was going into.

Q. When did you have those discussions? A. That was in November of 1972.

Q. That was after you had received your July 5th letter of probation? A. Yes.

Q. You knew there was some question about your clinical competence? A. Not from the July 5th letter. The February 7th letter.

Q. Did you have the discussion with Dr. Sirridge after the February 7th letter concerning your clinical competence? A. Yes, I did.

Q. What did he encourage you to believe—— A. He advised me to be more aggressive in acquiring skills.

Q. Did you attempt to do that? A. Yes, I did.

Q. Was anything said about whether you had minimally sufficient proficiency to graduate? A. He said he felt I should be graduated—that's Dr. Sirridge I'm talking about.

Q. Did you rely upon his advice? A. Yes, to some extent.

Q. Looking back on it now from the perspective you now have, do you feel there was some need for improvement in your **[323]** clinical proficiencies? A. I think if I were going back to school I would be just as aggressive in acquiring skills as I was in acquiring didactic knowledge.

Q. Do you know why you were less than aggressive in acquiring the clinical skills after Dr. Sirridge suggested you be more aggressive? A. Well, Dr. Sirridge suggested I be more aggressive in January of 1973 and I did become more aggressive in obstetrics. In fact, I was the only one—well, let me put it this way. The Thursday afternoon clinic was optional and I did come in whereas no other student did.

Q. Why had you been less aggressive during the preceding months prior to the time Dr. Sirridge—— A. I was acquiring didactic terms and needed that too.

Q. At any time did anyone suggest to you in what manner your personal hygiene or your personal appearance could have been improved while you were at the medical school? A. Dr. Sirridge mentioned once or twice about my white coats and he mentioned about my hair being a little mussed on one or two occasions.

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[325] Q. How did that have effect? How did you perceive that? A. I didn't perceive it at the time, but after reading Dr. Dennis's deposition I think that to some extent I was the butt of jokes in the emergency room.

Q. Do you now know perhaps why you were made the butt of jokes? A. I feel because I failed to conform to the female stereotype.

Q. Do you feel that your failure to conform to this stereotype as you put it or to the expectations of you in terms of your appearance materially affected your ability to acquire clinical

skills during your two years at the medical school? A. To some extent I think it did.

Q. Do you feel it caused you in any way to withdraw from the competitive effort to obtain those skills? A. I think so, yes.

Q. Why was that? A. I just in some places didn't feel too comfortable. In the emergency room, as I said, I was the butt of jokes and there was this continual disagreement between Dr. Chung and the nurses as to whether I was to remain in the front of the nursing station or in the back of the nursing station.

[326] Q. Similarly were you made to feel uncomfortable in any other clinical situations? A. I feel I was not wholly accepted by the student body.

Q. Did that nonacceptance evidence itself on any of the rotations or the clinical rounds? A. Not on clinical rounds, no.

Q. In what way did you feel that you weren't accepted by other students on some of the rotations you were assigned to? A. Well, as I mentioned, I did have problems with Jerry Burton on one rotation and with James Briscoe on another rotation.

Q. Do you feel that this rejection or avoidance of you in any way contributed to what has been described as your inability to accept criticism? A. I think so.

Q. Do you recognize whether or not at this time in your medical school career you did have an inability to accept criticism? A. I may have on some occasions.

Q. Do you now feel that this inability to accept criticism you had on some occasions was appropriate or inappropriate or severe or how would you characterize it? A. I think I would have been better off if I had been able to accept criticism in those instances.

[327] Q. How do you connect together this avoidance or rejection that you felt with your inability to accept criticism that

you experienced? A. Well, I think I became withdrawn and I became defensive.

Q. Similarly do you feel that this rejection or avoidance that you felt in any way contributed to the problems of your personal appearance or what has been described as personal hygiene? A. Well, I tried my best to always improve my appearance.

Q. Do you feel that the self-esteem in which you held yourself while in medical school is comparable to the self-esteem that you feel today? A. I think I have more self-esteem today.

Q. Did the avoidance or rejection which you experienced in any way contribute in your opinion to that lower level of self-esteem you—— A. Yes, it made me feel lower in self-esteem.

Q. Did that in any way affect your desire or interest in combing your hair or changing your white coat or cleaning your fingernails? A. It may have.

Q. You also indicated a few minutes ago that on occasion you did have some difficulty in relating to patients. Do you feel that the avoidance or rejection that you had experienced during this time period contributed to that **[328]** inability to relate well to patients on occasion? A. On occasion it may have.

Q. During your two years at the medical school did you receive any assistance or structured help in dealing with this avoidance or rejection that you described? A. I did not receive any structured help, no.

Q. Could you have used it? A. Yes.

Q. Do you feel if you had had it your experience at the medical school might have had a happier outcome? A. Yes.

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HELENE GUTTMAN

called as a witness on behalf of the plaintiff, was sworn and testified as follows:

Direct Examination

By Mr. Benson:

Q. Would you please state your name. A. Helene Guttman. How do you spell Guttman? A. G-u-t-t-m-a-n.

Q. Dr. Guttman, how are you currently employed? A. At the University of Illinois at Chicago Circle.

Q. Where do you live? A. In a suburb of Chicago called Downers Grove, **[333]** D-o-w-n-e-r-s, separate words, G-r-o-v-e.

Q. How are you educated, Dr. Guttman? A. Bachelor's degree in biology and chemistry at Brooklyn College in New York City. Master's degree in medical sciences at Harvard Medical School. Another master's degree in botany and microbiology at Columbia University and PhD degree in microbiology and biochemistry at Rutgers University.

Q. How long have you been employed at the University of Illinois Chicago Circle campus? A. Eight years.

Q. In what capacity? A. As professor of biological sciences. I simultaneously hold an appointment in the medical school in the department of microbiology and in addition I serve on the admissions committee in the school of associated medical sciences.

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[338] Q. Is the medical profession traditionally—generally known as a profession dominated by one sex or the other? **[339]** A. Yes, it is, and there is a great deal of literature on this.

Q. Which sex is that? A. It is the male sex.

Q. How long has that tradition been in existence? A. In this country, from the time that we have had our present system of medicine, essentially the length of time of the existence of the country.

Q. Does it continue to the present? A. There are potentials for change, but at the moment I would say we are still essentially in the system as it existed.

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[346] Q. Assuming that there is some basis of accuracy in those reports that Charlotte did have some difficulty in peer and patient relationships, have you read the deposition of Dr. Dennis—— A. Correct.

Q. ——with regard to the treatment of Charlotte Horowitz by fellow students?
[347] A. Correct.

Q. Is that a manifestation of the interplay of sex roles in an educational institution? A. Yes, it is.

Q. In what way? A. In that an initial response which may be appropriate—here I'll have to add a value judgment—that initially she came in with high grades and one document that I read from a Dr. Coburn of the National Institute of Mental Health indicated that she had humor and was very good in interpersonal relationships. Therefore, I would say that this gave an impartial starting point of what she was like before her experience here. The conclusion that I must reach is based in great part on Dr. Dennis's response that even he was afraid to admit that he was her friend because he would be ridiculed, but this sort of thing has an extremely negative effect on the person who this ridicule is directed at and eventually this does have an effect so that the prophecy becomes self-fulfilling. The combination of that plus lack of positive guidance and just negative statements that you are no good—eventually it does become a fact, because there is no specific guidance for improvement.

Q. How was this problem of peer and patient relationships bottomed in or caused by sex role expectations or sex **[348]** discriminations? A. I'm afraid your question isn't quite clear.

Q. To what extent did discriminatory application of expectations among medical students contribute to Charlotte's difficulty in achieving satisfactory peer and patient relationships? A. One learns from one's peers. You come in as a group and you do a great deal of evaluation of each other. In this respect she was deprived of this because what she received from her peers was ridicule.

Q. Was that deprivation caused by her sex? A. It was caused by—I must go to Dr. Dennis's evaluation—by her sex and that her appearance didn't fit what his male evaluation was of an appropriate stereotype for a young woman medical student.

Q. Similarly with regard to matters of personal appearance or personal hygiene, you have heard today and have read documents, have you not, with regard to criticism of Charlotte Horowitz concerning those matters? A. Yes, I have.

Q. To the extent that any of them have a basis in fact, could that difficulty have been caused or contributed to by a similar factor of her sex? A. Absolutely. It is unfortunate, but these gradations and expectations are not made of male medical students. **[349]** It is unfortunate that it has been allowed—that males are allowed a greater latitude in dress, in neatness et cetera.

Q. Do you have indications that this is operative at this medical school based on the information that you have read? A. Based upon the information, it appears to be so.

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[350] Q. What are some of the usual responses of the female medical students when they are placed—female students in general when they are placed in a situation where they are being

discriminated against because of their failure to meet sex role stereotypes? A. The current president of Radcliffe College has written extensively on this and it is in the public domain in professional journals. One of the responses is gradually to fail and to fulfill those expectations of failure even though the intellectual capacity of the person initially was as great or greater than her peers.

Q. Do you have an opinion as to whether these factors that you have described with regard to sex role expectations and discrimination on the basis of sex contributed **[351]** substantially to the failure of Charlotte Horowitz at this medical school? A. Based upon limited information I would judge that it seems to fit the usual pattern.

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[367] RICHARDSON K. NOBACK,

recalled as a witness on the part of the defendants, having been sworn previously, testified further as follows:

Direct Examination

By Mr. Marvin Wright:

Q. Doctor, would you please state your full name. A. Richardson K. Noback.

[368] Q. Doctor, what is your present position? A. Dean, University of Missouri Kansas City School of Medicine, and full professor.

Q. Dr. Noback, would you give us a brief history of your personal educational background. A. I attended Columbia College of Columbia University. I then went to the Cornell University Medical College, graduated in March of 1947. I was a medical intern for the subsequent year at the New York Hospital

and assistant resident physician on the Cornell Division of Belleview Hospital for the next two years, chief resident physician on the Cornell Service at Belleview Hospital for the next two years. During one of those years I was a National Heart Institute research fellow. Those were concurrent appointments. During the last three years I was an instructor in medicine at Cornell.

After completing the five years of formal residency and internship training after graduation, I joined the faculty at Cornell as an instructor in medicine and as the assistant director of the comprehensive care and teaching program, a major or new educational program. In February of 1953 I was called to active duty in the air force. There I served as assistant chief and then chief of medical services in the 2500th USAF Hospital. On leaving the air force I was **[369]** invited and accepted a three month appointment as a consultant to the University of Tennessee medical units in Memphis and to the John Gaston Hospital. I joined the Upstate Medical Center at the State University of New York, Syracuse, New York, as assistant professor of medicine and the university's agent responsible for the ambulatory care programs. That was in the beginning of the 1955 academic year.

I was invited by Dr. William R. Willard to join Dr. Willard and three other individuals to design and implement the new medical center at the University of Kentucky in Lexington. Five of us assembled there in October of 1956 to design and implement the school of medicine—correction—the college of medicine, the college of dentistry, the college of nursing, the medical library and the university hospital. At Kentucky I had several roles, assistant dean, associate professor of medicine, director of the university health service, and the coordinator for patient care of the entire medical center.

In the beginning of December of 1956 I came to Kansas City with two appointments—with three appointments, one, professor in the school of medicine, then Columbia campus, as associate dean of that same school, and as the executive director

of the Kansas City General **[370]** Hospital and Medical Center. The purpose of my coming was to help the development of patient care and educational programs in Kansas City within the university family. That led after approximately five years to an appointment as the acting dean of the UMKC School of Medicine and, with the formal commitment of full funding to that school, to the position as the dean.

Q. Doctor, going back, did you help establish the medical school here at the University of Missouri at Kansas City? A. That is correct.

Q. And you have been since the implementation of that school either the acting dean or full dean of that school? A. Yes, sir.

Q. Dr. Noback, these two documents which we've marked as Defendants' Exhibits 1 and 2 are entitled, Open Medical School. Are those documents the Academic Plan formulating the policies, procedures and methods of the school of medicine? A. Yes, Mr. Wright, they are.

Q. All right. Now, Dr. Noback, would you tell us what is the primary purpose, thrust and goal of your medical school? A. Our fundamental purpose is to help young men and young women prepare themselves to be effective and safe physicians.

[371] Q. Dr. Noback, would you explain to us what the school means by safe physician. A. I would be very glad to and I'll ask your indulgence because it is a fairly long answer. The safe physician is an individual who has a number of characteristics. I would like to go through those in sequence. First the safe physician must have mastery of a central body of information. In our language this information is composed of a group of concepts and a group of facts. Together with these, the individual needs to have a group of clinical skills such as history taking, the ability of carrying out a physical examination and to do a number of procedures. I make the point here because in much of the discussion in the courtroom there has been inter-

changeable use of skill as I have heard the discussion of the term skill.

Our use is consistent to describe psychomotor abilities. Other people use skill for what we call clinical competence. If you would allow me then I'll return to the definition of the safe physician. An individual with mastery of requisite concepts, facts and clinical skills so that as these three value components are guided by a compassionate and steady intellect we have the beginning clinical competence—the beginning clinical competence that is required for anyone to earn **[372]** the medical —the clinical medical degree. That's one set of characteristics.

Another set of characteristics is that the safe physician needs to be committed to a lifelong program of continuing education. This simply recognizes the fact that medical knowledge is continually expanding so that each of us must continually update and add to our existing store of information in order to be competent and to be safe. The safe physician must be able to work in a team setting or work with members of other disciplines. The practice of medicine requires that all of us engage in many organized activities with many others in the health care professions.

So the safe physician must be able to function effectively with members of a team. The safe physician must have another characteristic. That is to have a valid perception of her or his own abilities and limitations. This picks up on the point that none of us is complete. We must know where our own competence begins to end so that we can ask for the help of others or transfer responsibility for patient management to others.

The safe physician needs to welcome self-criticism and to welcome criticism of others. We are engaged obviously in a profession in which we're responsible **[373]** for other individuals. We must continually ask ourselves how well are we doing and we must solicit the constructive criticism from our professional colleagues and from our patients in order to

continually moderate and improve our own performance. The safe physician has another characteristic. That is that the safe physician must be able to put the welfare of other individuals above our own particular convenience and with grace and with effectiveness respond at odd hours to important requests. Putting these together then we have what the school has described as a safe physician.

Q. Dr. Noback, I assume that safe physician includes one that is qualified not only in basic medical sciences but also in clinical competence. Is that correct? A. That is entirely correct. If I did not make the point before, I would like to reemphasize that the medical degree is a clinical degree. We must be able to fuse, to bring together, to intertwine and to continually use information from three classic disciplines, the basic sciences, the behavioral sciences, and the clinical sciences.

Q. Doctor, was it ever the intent of the medical school to offer an MD degree to someone who was qualified only in basic sciences and not in clinical competence? A. No, Mr. Wright.

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[377] Q. Dr. Noback, how are students evaluated in the medical school? A. The evaluation process is built on a number of **[378]** assumptions and has a number of procedures. All of these follow the Academic Plan which we've previously at least handled. There is an evaluation from each responsible faculty member as the student completes each curriculum assignment or rotation within the school. In the instance of a docent, the docent provides that evaluation when the student completes the three month experience as Dr. Sirridge described yesterday.

The instance of another rotation, let us say the Children's Mercy Hospital and the assignment to the principles of pediatrics, the responsible faculty member assembles the judgment of those faculty members who have worked with the student in that rotation and provides a synthesis or a summary of the experience that the faculty and the members of the staff have had

with that particular student. These are written reports. They often have two components. One is the series of entries in the grid or the matrix that was discussed yesterday. That entry may be supplemented by prose narrative in the portion for remarks and comments.

This is an integrated assessment, a fair, deliberate integrated assessment that speaks to personal characteristics as were reviewed yesterday and to the faculty's judgment of the student's accomplishment with respect to concepts, facts, skills and developing clinical **[379]** competence. I pick these three items out because they've been so important in our discussions and I would like to make the point that in the Gold statement books which I mentioned before the faculty for each of those major rotations has indicated what their educational intent is, what the educational objectives are for that rotation, say a Year III rotation in pediatrics.

Q. Dr. Noback, in respect to evaluating students I assume you have quarterly examinations which are written exams. A. Right, thank you. I was pausing to let my mind catch up with my speaking and then go on and say that is one kind of an evaluation. Another evaluation comes from the quarterly profile examinations. These are a major feature of this particular medical school. Four times each year each student in the school takes a major multiple choice examination. The examination lasts a day. It has about 400 questions. These questions are designed to probe the student's mastery of factual information in those disciplinary areas that are central to the student's growth as a medical student.

Q. Now, Doctor, in evaluating students, your students also take the National Board examinations, do they? A. That is correct. This is another of the parameters that are used in evaluation. The National Boards represent the major national mechanism by which to make an **[380]** assessment of the information that a medical student has, whether that medical student be in Kansas City, Columbia, or Boston.

Q. Now, Doctor, you refer to it as measuring the information a student has. Will you tell us whether or not the National Board examinations can measure clinical skills, judgment, the ability to solve problems with a patient. A. That's a hard question to answer, Mr. Wright. In my judgment it is clear that the major component in the National Boards is the measurement of information. What does someone know? What can someone recall? There are attempts to use questions that simulate the problem solving skill of physicians and to some extent I believe that is successful. To get to the major—what I interpret to be the major point of your question, though, there is no way that a pencil and paper examination can make an assessment of the ability of a person to talk to a patient, to examine a patient, and to go through the reasoning process and the human interaction that's required in patient care.

Q. Doctor, in making this evaluation of patient care, and the measurements you mentioned previous to that, is it of necessity done by subjective judgment of a faculty member? A. You are speaking now of the faculty member's assessment **[381]** of the student?

Q. Right. In respect to clinical skills and clinical competence. A. Yes. This is a subjective judgment. I would like to add that in any medical school that judgment is subjective, that those on the faculty entrusted with the responsibility for making that judgment have substantial experience in education. They are familiar with the objectives of the school, what's expected of students at different times, and they bring to bear then what is the central part of any medical school, the mature faculty judgment about whether the student has the clinical competence that is requisite for a graduating medical student. That is a performance judgment. It has in it assessment of information, but it is a performance judgment and it has to be subjective.

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[385] Q. Dr. Noback, in July of 1972 did you, following the recommendation of the Council on Evaluation, place Charlotte Horowitz on probation? **[386]** A. Yes, sir.

Q. Doctor, under letter of July 5th, 1972, marked Defendants' Exhibit 8—is that the letter that you notified Miss Horowitz of that probation? A. Yes.

Q. Prior to sending that letter to her, did you have a personal discussion and conference with her about the matter? A. Yes, Mr. Wright, I did.

Q. Would you tell me generally what you discussed with her during that conference. A. On July 1st of 1972 I met with Miss Horowitz, Dr. William Sirridge and Dr. Smull. We discussed in a long meeting the points of concern to the Council on Evaluation. These included the fact that the council and the Coordinating Committee had engaged in a thoughtful review, that the Council on Evaluation had had a mature deliberation and had reviewed all of the information in the school about Miss Horowitz' performance to that time.

Q. Doctor, your letter of July 5th sets forth some areas of deficiency which must be improved. Did you discuss those areas with Charlotte Horowitz in your meeting of July 1? A. Yes, Mr. Wright, and in preparation for that meeting I constructed a number of points that I took with me to the meeting that I discussed with Miss Horowitz once and **[387]** that I discussed with her twice. My past experience simply tells me that when there are meetings of substance and points of strain some times the first statement is not sufficient. Therefore, I had the outline. I used it. I have it here. I have my checks and my notes that tell me I went over each of these points twice.

Q. So you went over each point twice? A. That's correct.

Q. Doctor, in your opinion, when you were outlining the areas that you desired improvement, did Charlotte Horowitz seem to understand what you were talking about? A. Yes.

Q. Did she raise any questions about, "Will you tell me specifics as to what I must do"? A. To the best of my memory, the discussion of points such as keeping to established schedules, meeting clinical responsibilities on time and gracefully, attending to personal appearance, hand washing, nails and grooming, participating appropriately—that these were generally understood. As I am speaking now I am refreshing my memory from my summary of that meeting.

Q. Dr. Noback, following that meeting in July, did you again have a meeting in October with Charlotte Horowitz and her docent? A. That is correct. That was on a——

[388] Q. Doctor, would you tell us, why did that meeting come about? A. Dr. Sirridge had alerted me to his concern about Miss Horowitz' performance so that we both felt that it would be well for Miss Horowitz, her docent and the dean to have a constructive meeting to review the concern and not to stand on any formality but to try to be helpful and indicate what that concern was.

Q. Did you explain to her at that time what her difficulties were, what the deficiencies were? A. Yes, in the course of a meeting of about an hour we reviewed her probationary status, the need that she had for strong performance in all areas, our concerns about recent performance which is not strong—that's Dr. Sirridge's assessment—and our intent at that meeting to accomplish two things. The first of those was to call attention in a direct and supportive way to the fact that her performance was not then strong and that she then needed to be thoughtful and effective in planning and carrying out her activities so that she would be able to meet the expectations and standards of the school. The second was to make clear to Miss Horowitz our interest in helping her to get any additional assistance which she thinks would help her in her relationship with others, with clinical performance or with other activities.

[389] Q. Did she request any specific help that you recall? A. Not that I recall at that time.

Q. Do you know as to any efforts which her docent made in order to assist her in alleviating deficiencies? A. Well, I know that her docent had literally a tremendous number of meetings with Miss Horowitz. I know that he was steadfastly her advocate and champion in the best sense. I know that he has been in discussion with her physicians and he has given me every evidence of a continuing and serious effort to help Miss Horowitz.

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[390] Q. (By Mr. Marvin Wright) I believe when we recessed for lunch that we had just covered the docent evaluation turned in by Dr. Sirridge covering the period of time September through November of 1972. Dean, is it correct that the Council on Evaluation met in December of 1972 to consider the status of Charlotte Horowitz as a student in medical school? A. Yes.

Q. Dean, I'll hand you Defendants' Exhibits 50 and 51 and ask you if those are true and correct copies of the minutes of those meetings. A. They certainly appear to be.

Q. Now, Dean, what was the recommendation in your own general terms of the Council of Evaluation? A. I think I could read it. It's been specific——

Q. That would be fine. A. The Council on Evaluation recommends that

> "This student be continued on probation and not be considered as a candidate for the M.D. degree in June, 1973. The student may choose to remain at U.M.K.C. School of Medicine until June 1, 1973, but may not continue beyond that date unless there is radical improvement in the following areas: clinical competence, peer and patient relations, **[391]** personal hygiene, and ability to accept criticism."

Q. All right. Now, Dean, following receipt of that recommendation did you have a conference with Charlotte Horowitz? A. Yes. After those recommendations went to the Coordinating

Committee and were there sustained, we met with Miss Horowitz in early February of 1973.

Q. All right. Now, Dean, in that meeting with Miss Horowitz did you explain to Miss Horowitz the fact she was not a candidate for graduation in May? A. Yes, sir.

Q. Did you further explain to her that her deficiencies were in clinical competence, peer and patient relations, personal hygiene and ability to accept criticism? A. Yes, sir.

Q. Now, Dean, did Charlotte Horowitz seem to understand what those deficiencies were? A. Yes.

Q. What was her reaction? A. Her reaction then as in previous and subsequent discussions was to find fault with all of those who brought critical judgments to us about her.

Q. Now, Dean, did you in your letter of February 7th, 1973, which is marked as Defendants' Exhibit 9, notify Miss Horowitz of those decisions in that letter? **[392]** A. Yes, sir.

Q. In that letter did you confirm the reasons of her deficiencies? A. Yes, and as in all of the formal discussions we've had I made it a point to go back to notes and to recount, to repeat the substantive points in our discussion.

Q. Now, Dean, did you also in that letter inform Miss Horowitz that she had a right to appeal the decision of nongraduation in May? A. Let me check my memory on that. Yes, sir.

Q. Now, Dean, did Charlotte Horowitz elect to appeal the decision of nongraduation? A. Yes, sir.

Q. Dean, Exhibit Number 10 for defendants, is that her request that she be examined on an appeal? A. Yes, sir.

Q. All right. Now, Dean, would you please tell us the procedures which you implemented and the reason for those procedures to be carried out in the appeal process. A. I considered very seriously the best method to achieve for Miss Horowitz and

for the school a fair and neutral and impartial assessment of her clinical performance. To accomplish that, I first wanted to impanel as a group of examining physicians individuals who had not worked previously with Miss Horowitz, so there could be no **[393]** question about any prior relations between them. No bias one way or the other would be possible. Second, I wanted to have physicians from those curriculum—let me correct myself, please. I wanted to have physicians on the examining panel whose specialties represented the major curriculum blocks through which Miss Horowitz had had her own rotations. Third, I wanted to have in that panel physicians with experience in medic education and, fourth, I wanted to have in that panel physicians whose earned competence placed them above any criticism.

With that in mind, then, and with consultation with others, I identified seven individuals, called them to see if they would be willing to serve on the panel, constructed a summary statement which has already been introduced, met with them to go over the content of that communication.

Q. Now, Dean, in your meetings with these individuals, did you request the individuals to confirm the fact of nongraduation or to confirm the opinion of the medical school? A. No. If I understand your question, the request was to ask for their judgment about Miss Horowitz' competence as of the time that they examined her. Specifically we were not—we were not seeking any particular judgment other than their own best judgments.

[394] Q. Did you request them to examine her as a panel, or each one to examine her individually? A. I deliberately asked each one to examine Miss Horowitz individually.

Q. Dean, Defendants' Exhibit Number 11, is that the notification to Miss Horowitz about the appeal panel and the manner in which it would be constructed? A. Yes, sir.

Q. And, Dean, Defendants' Exhibit Number 22, is that the communication that you directed to those seven physicians requesting them to carry out the examination? A. Yes, sir.

Q. Dean, did you receive subsequent to that request evaluations and reports from the seven physicians which you had requested to carry out the evaluation? A. Yes, I did.

Q. Dean, very quickly, Defendants' Exhibits 15 through 21, would you tell us if those are the evaluations which were received from each of the individual seven physicians. A. Yes, sir.

Q. Dean, upon receipt of those seven evaluations, did you submit those evaluations to the Council on Evaluation? A. Yes, I did.

Q. Dean, after consideration of those reports or evaluations of the seven physicians, what action did the Council on **[395]** Evaluation take? A. The Council on Evaluation reached the judgment and formed the recommendation that Miss Horowitz not be a candidate for graduation at the end of May of 1973.

Q. Now, Dean, did the Council on Evaluation consider the information contained in those letters from those physicians? A. Yes.

Q. Do you know whether or not each individual member of that Council of Evaluation had the benefit of seeing each individual letter? A. Yes. I prepared copies of the letters and distributed them to the members of the council.

Q. Dean, I'll hand you what's marked Defendants' Exhibit 52 and ask you if that is the action which was taken by the Council on Evaluation. A. Yes, sir.

Q. And was that action confirming their previous opinion she should not graduate in May 1973? A. That is correct.

Q. I'll hand you Defendants' Exhibit 55 and ask you if that is a copy of the minutes of the Coordinating Committee meeting in respect to that same decision. A. That is correct.

Q. Did that Coordinating Committee confirm the decision of **[396]** the Council of Evaluation that she should not graduate in May 1973? A. That is correct.

Q. And as dean of the school of medicine did you accept those recommendations of nongraduation? A. Yes, I did.

Q. Dean, did you notify Miss Horowitz by letter of the fact that she would not graduate? A. Yes, sir.

Q. Dean, explain why you felt that Miss Horowitz was not qualified for graduation in May 1973. A. Miss Horowitz had been placed on probation in—at the first of July—first of July of 1972. She had been reminded in the fall of 1972 of the need to make improvements. There had been a substantive review in December. We had a subsequent meeting reviewing with her the need to improve her performance in a number of categories. There was a clear set of discussions in all of those meetings about the need to have clinical competence, to have the components of clinical competence and to remedy the problems that we've discussed here. If I may——

Q. Dean, reaching—— A. If I may.

Q. Excuse me. **[397]** A. As we move ahead then to the judgments in May, we were dealing with an individual whom we had tried to work with and tried to help, whom many members of the faculty had tried to help from the beginning of July up to May, and there had not been improvement. We felt that this was clear evidence that she was not ready to graduate at that time.

Q. Dean, did you consider the evaluations made by these seven physicians in reaching your decision of nongraduation? A. Yes.

Q. In your tabulation of those evaluations, would you tell me very briefly what your opinion was as to how many recommended graduation and how many opposed graduation. A.

Two physicians recommended graduation. Five did not recommend graduation.

Q. One of the physicians who recommended graduation, did you consider it to be an all-out qualified recommendation of competency? A. No. I think it's clear that Dr. Dodge's recommendation was that the student graduate. His letter makes it very clear that the student did not have the competence that the school desired or that Dr. Dodge felt desirable and his point was that the fault probably lay with the school, not with the student.

Q. Dean, is Defendants' Exhibit 12 a copy of the letter by **[398]** which you notified Charlotte Horowitz she would not graduate? A. That is correct.

Q. Dean, did you also advise Charlotte Horowitz of the fact that there would be future meetings to consider whether or not she would remain in school? A. Yes.

Q. Dean, I'll hand you Defendants' Exhibit 53 and ask you if that's a Council of Evaluation minutes in respect to the question of Charlotte Horowitz's continuation in medical school. A. This is a preliminary judgment.

Q. What is the date of that, sir? A. May 14th.

Q. So no decision was made on that day by the council? A. That's correct.

Q. I'll hand you Defendants' Exhibit 54 and ask you if that is a copy of the minutes of the Council of Evaluation meeting dated May 28th. A. That's correct.

Q. What decision or recommendation was made by that council at that time, sir? A. Let me quote one sentence from the minutes.

> "The Council unanimously recommended that Miss Horowitz be dropped from the UMKC School of **[399]** Medicine."

Q. Now, Dean Noback, I'll hand you Defendants' Exhibit 56 and ask you if that is a copy of the minutes of the Coordinating Committee meeting of the medical school. A. Yes, sir, it is.

Q. What action did the Coordinating Committee take? A. The recommendation of the Coordinating Committee was that Miss Horowitz be dropped from the school of medicine.

Q. Dean, what information—what evaluations did the Council on Evaluation and the Coordinating Committee and yourself as dean—what rotation evaluations did you consider in reaching a decision that she should be dropped from the school? A. All of the information in her evaluation file. Of particular importance were the reports from the rotations in obstetrics and gynecology, surgery and emergency room, because these were the most recent rotations. They represented the judgments of the faculty of her last five months in the medical school.

Q. Were they evaluations which she had received after the date that the council had already made a decision she would not graduate in May? A. If my memory is correct, that would have been the case for the emergency room rotation.

Q. Dean, I'll hand you Defendants' Exhibit 45 and ask you if **[400]** that is a copy of the evaluation of the OB-GYN rotation of Charlotte Horowitz in the medical school. A. Yes, it is.

Q. Dean, I'll hand you Defendants' Exhibit 40 and ask you if that is a copy of the evaluation in surgery. A. Yes, it is.

Q. I hand you Defendants' Exhibit 41 and ask you if this is a letter which accompanied that evaluation in surgery. A. Yes, I recognize that letter.

Q. I hand you Defendants' Exhibit 43, which is an evaluation of Charlotte Horowitz' performance in emergency room. A. And I recognize this as that item.

Q. Were these different evaluations considered by the council and yourself in reaching your decision that she should be dismissed from medical school? A. Yes, sir.

Q. Dean, you notified Charlotte Horowitz then in writing that she would be dropped from the school of medicine. Is that correct? A. I believe that's correct.

Q. Now, Dean, was your decision to drop her from medical school reviewed by any higher authority in the University of Missouri? A. Yes. Miss Horowitz asked that the actions of the school be reviewed by the provost for the health sciences. Dr. **[401]** Dimond reviewed her full set of records. His conclusion was to sustain the actions taken previously by the Evaluation Council, the Coordinating Committee, and the dean.

Q. Dean, would you tell us why you as dean did not continue Charlotte Horowitz in school beyond the end of May 1973. A. The answer is similar to the previous one, but let me address the question. Miss Horowitz had been in receipt of warning, in receipt of discussion, in receipt of efforts to help formally since the beginning of July of 1972. There had been repeated discussions, repeated attempts to help. In spite of that, during a period of more than a full academic year Miss Horowitz was not able to make the progress that the school judged necessary. It seemed to me clear that a period of more than a usual academic year in someone who is at the senior level of medical school, who is almost ready to enter a residency, who is thirty-two—that all of these factors made it clear that continuing Miss Horowitz in school would not accomplish anything that could not have been accomplished in the previous ten months.

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[426] Q. Dr. Noback, don't you have to acknowledge that based upon this long history of concern you've expressed about Charlotte and her personal appearance that Dr. Bayer was likely right that there may have been some attitude towards herself which needed correcting, that she needed help correcting? A. Yes, and that's exactly why we urged and helped her seek professional counseling.

Q. But at any time did you or anybody you know of take Charlotte Horowitz and sit her down and tell her what you thought about her—— A. Absolutely.

Q. ——long hair and the way she cut her hair and combed her hair? Did you do that? A. About her dress absolutely, about cleanliness absolutely.

Q. Talked to her in general terms. You said, "You're not making progress and we pointed this out to you last spring." A. I don't know really, Mr. Benson, how much more direct you can be without being downright offensive in talking **[427]** to a thirty-one, thirty-two year old professional student and make the point that clothes need to be cleaned, the person needs to be cleaned, the hands need to be cleaned, the nails need to be cleaned. Now, I really am puzzled by why the repeated elaboration on these points when these ones were discussed with Miss Horowitz at the Children's Mercy Hospital, by Dr. Sirridge, by me. There comes a point when you don't just put on cleats, you know, and go over people with cleats.

DEPOSITION OF NED WILLITS SMULL

[448] Q. Doctor, will you please state your full name. A. Ned Willits, W-i-l-l-i-t-s, Smull, S-m-u-l-l.

Q. Doctor, would you please tell us very briefly your educational background. A. Graduate of the University of Kansas undergraduate school, University of Kansas Medical School, postgraduate training in pediatrics, pediatric medicine at the University of Kansas; been involved in medical education since completion of my residency in 1954, both at the University of Kansas and in the University of Missouri, in the University of Missouri at Kansas City.

Q. Dr. Smull, it's my understanding in 1971, '72, '73, you were the director of Children's Mercy Hospital—— A. That's correct.

Q. ——in Kansas City. You were also the individual who had the ultimate responsibility for pediatric rotations and education of medical students at UMKC? A. That's correct. I was director and chairman of pediatrics **[449]** in regard with implementing the pediatrics portion of the UMKC curriculum.

Q. Dr. Smull, did you hold any other appointments or positions with the University of Missouri at Kansas City? A. Professor of pediatrics as well as assistant dean—at that time—and chairman of the Council of Evaluation.

Q. Dr. Smull, was your first contact with Charlotte Horowitz at the time she went on a pediatrics rotation in the spring of 1972? A. Yes. I may have had—well, that 's the first contact that I can remember, that is correct.

Q. Dr. Smull, in pediatrics rotations do you assign students to what you refer to as subdocents? A. Yes, in the context of the Academic Plan of the school, students are with their docents on a three month rotation in essentially internal medicine. The other nine months of the year they are in other environments for carrying out the Academic Plan. So that in pediatrics they have a two month rotation, what is now known as Year III and also Year V, but at the time Miss Horowitz was a student in which the beginning of the year—beginning of that medical school class there were advanced students who came into a two month required rotation block at Children's Mercy.

Q. Now, Dr. Smull, did you have a Dr. Herbert Wenner who **[450]** serves as subdocent under you? A. To carry out the Academic Plan again, Mr. Wright, we assigned the students in pediatrics to what we called a pediatrics docent who again was the student's ombudsman as well as student advocate during this educational experience. Dr. Wenner had that assignment for that group of students including Miss Horowitz.

Q. As Dr. Wenner's supervisor do you know of any occasion of Dr. Wenner being biased or prejudiced against females? A. Absolutely not.

Q. Against people of the Jewish faith? A. Absolutely not.

Q. Against black people? A. Absolutely not.

Q. Now, Dr. Smull, would you tell us briefly about the pediatrics rotation of Charlotte Horowitz and the evaluations that were rendered in respect to her performance. A. I think as has been entered into the record and I will not repeat it in great detail—because of the structure that we had then and we continue to have, about halfway through this rotation not only Dr. Wanner but other faculty members of Children's Mercy and—as I think Miss Horowitz testified yesterday, probably ten total—there was constant expression of concern about lack of being **[451]** able to clinically perform. By that we mean we were not questioning her basic intellectual capability for facts, but in the clinical setting Miss Horowitz fell far below her peers, far below expectations for a student at her standing in being able to translate facts into even the basic elements of a history or a physical examination, use of instruments and so forth. It was because of this that we had—I had personally a number of conferences with the faculty members. It was because of that that we—with my approbation Dr. Wenner wrote Dr. Sirridge, who was her senior docent, a letter of concern halfway through saying, "Charlotte is having difficulty. We want you to know the areas in this difficulty." It was also at this time that because of Miss Horowitz' expressed desire to ultimately become a psychiatrist, even though to become a—the Academic Plan certainly called for a safe physician. We felt very emphatic to the idea that she wanted to be a psychiatrist and maybe the clinical setting of pediatrics was a little foreign. We tried to introduce very specially some patients who had emotionally disturbed aspects about their clinical behavior and even under these circumstances she fell far short of being able to perceive the relationship between the problem and development of a plan of approach for evaluation and treatment of such a problem.

[452] Q. Dr. Smull, in respect to the difficulties which she was having, did you offer her any remedial help? A. Very definitely.

Q. Would you tell us what type of remedial help you offered. A. Well, I think here again, as Dr. Smith has testified, we were concerned about the clinical performance. We conferenced about how we might support her better in an ambulatory setting, in the pediatrics clinic. Several of the faculty expressed tneir willingness to help her, but unfortunately each time we attempted to do this it was misunderstood by Miss Horowitz and—as though we were focusing upon what we viewed as serious shortcomings in a punitive way and there was nothing punitive about our attempts to help at all.

Q. Dr. Smull, did you assign Dr. Wise, Kuhl and Anderson to a one on one clinical setting with Charlotte Horowitz to try to help her? A. That's correct.

Q. And do you know that they actually attempted to help her correct her deficiencies? A. The information that they told me is that they did. There was also Dr. Kuhl. I can't give you actual instances of this approach in terms of numbers in the daily contact but I do know there was a very valid attempt on the part of the pediatric faculty to work with Charlotte on a one **[453]** to one basis to help her perceive the differences in approach to a young child over that to the approach of an adult, not only in taking a history but also to do a physical examination.

Q. Doctor, tell me, do you know whether any of the faculty working under you were biased or prejudiced against Charlotte Horowitz? A. Absolutely not.

Q. I'm talking about in discussions they had with you. A. Absolutely not, and I think that if there is a common theme that I could emphasize it would have been that there could have been no happier group of people not only at Children's Mercy but throughout the medical school per se—there would be no happier group of people to see Charlotte turn around

so to speak and develop the clinical competence that was necessary to become a safe physician.

Q. Dr. Smull, I believe you stated that her evaluation on her rotation in pediatrics was unsatisfactory. A. That's correct, and I think, to review briefly that stage of the evaluation process, this was a composite of my getting together as professor and chairman of pediatrics with a faculty who were involved most closely with Charlotte during that period of time to then get a composite recommendation to the Council on Evaluation **[454]** as to her experience, and I think that is a matter of record that that composite was an unsatisfactory experience.

Q. Dr. Smull, Defendants' Exhibit 58, is that a copy of the written portion of the evaluation which you gave on the pediatrics rotation? A. That's correct.

Q. Dr. Smull, do you know whether or not Charlotte Horowitz was ever informed that her rotation in pediatrics was unsatisfactory? A. I know on at least two occasions in my experience in which I was with—as I recall, Dr. Noback and Dr. Sirridge—that this information was given. I am confident that it was given even before those conversations, because one of the basic questions that came up following this unsatisfactory experience was, What was going to have to—in projecting Miss Horowitz' curriculum throughout the following year, would she be required to take—to repeat the pediatric rotation? I think that not only in the Council on Evaluation but in the Coordinating Committee and with Dr. Sirridge I as chairman of pediatrics said it is not unusual for a medical student to dislike very intensely a certain portion of their medical school curriculum, that I would not as chairman require her to repeat that rotation **[455]** provided the rest of her performance throughout medical school was satisfactory. In other words, again, trying to help her, trying to respond to her need as well as the responsibility of the school. This action was taken. Now, this was not—this was action that could have been—in other

words, she could have ultimately been asked to repeat pediatrics but it was because this question was raised early in the game that we as the pediatric department as well as the Council on Evaluation clarified this issue with Dr. Sirridge and the Coordinating Committee very rapidly.

Q. Now, Dr. Smull, you are chairman on the Council on Evaluation? A. Yes. I was at that time. I am no longer chairman.

Q. You were chairman of the council from '71 through '73? A. That's correct.

Q. Now, the Council of Evaluation met in June of 1972 and what action did the council take in respect to Charlotte at that time? A. Well, as I recall the—and I'm going to paraphrase the action as I remember it. If I had the minutes in front of me I could state specifically, but we were concerned because the repeated information that came to the council not only from just Dr. Sirridge but from other faculty members was that Charlotte, with all honorable intent, **[456]** wanted to graduate, become an MD, do psychiatric research. There was the constant thread in that that said many of the skills, competencies, facts and so forth in the Academic Plan probably were not applicable—I'm paraphrasing and quoting the information that we were getting—not applicable to Charlotte because she was going to be a psychiatrist. The Council on Evaluation's constant position and the constant theme of the council was that we had a responsibility not only to Miss Horowitz but to the school as such, that there were certain requisites and requirements of this school for—standards for everyone, that we were—our major and honorable goal was to graduate safe physicians with a commitment to continuing education. What they were going to do after graduation was their choice. The school per se had no control over that so that——

Q. Dr. Smull—Excuse me. A. ——it was at this time at the council meeting that we were asked to consider Miss Horo-

witz in terms of promotion from Year V or advanced standing of Year VI, with an expected graduation date—and I use that word expected advisedly—expected in May of 1973. We were very concerned that she would be able to—whether she would be able to provide the clinical skills, the clinical competencies in that time to graduate. So it **[457]** was this time that we recommended she not be promoted.

Q. All right. Now, was it in June of 1972 that she was recommended to be placed on probation and the dean so did? A. That's correct.

Q. Now—— A. And the council went along with this recommendation with the understanding that this probation meant that there were serious clinical performance difficulties that were recognized at that time, that we felt the educational process should respond to help in any way we could to shore up those clinical competencies and performance through the period of months ahead, so the council went along with the dean and Dr. Sirridge and identified her as a Year VI student.

Q. Now, Dr. Smull, did the docent for Charlotte Horowitz appear before the council, before you took action? A. That's correct.

Q. All right. Now, Doctor, did the Council on Evaluation again meet in December of 1972? A. That's correct.

Q. Is the document which you have, marked Defendants' Exhibit 51, a true copy of those minutes? A. Yes, the only thing that I'm hesitating——

Q. Doctor, let me ask, in December of '72 did the Council **[458]** on Evaluation recommend that Charlotte Horowitz not be a candidate for graduation in May? A. That is correct.

Q. And, Doctor, would you tell me the reasons that the Council on Evaluation deemed her not qualified to graduate? A. I think that here again that in total review of all the progress from the letter or the time of probation in July through

her rotations, through her experiences and recommendations from the people with which she had been involved, that the council still felt that there was serious performance difficulties, adaptability to translate facts into performance, deal with patients as a human in a problem solving endeavor, that we felt there was still serious deficiencies. That because of this felt that it was unrealistic for Miss Horowitz to expect to graduate in May of 1973. It was because of this, and this was a two part decision, it was because of this that the recommendation was made that she would not graduate in May of 1973. The council also recommended continued probation during that six month period with an opportunity again to develop a—to develop a response, again with special help, with special focus, on developing clinical skills and competencies during that period of time. So that there was a two part recommendation, not graduate in 1973, continue on probation and may remain **[459]** in school until June '73, but if there was not marked improvement, and I think the word radical was used, and the council used the word radical advisedly, because we expected and we needed in meeting our responsibilities to the school and to Miss Horowitz, we needed some evidence of radical improvement.

Q. Doctor, was that vote of the council a unanimous vote? A. That's correct.

Q. Doctor, did you have occasion to meet with Miss Horowitz concerning action of nongraduation in May following your meeting? A. We did. And here again the sequence is a little hazy to me but the context is not. First of all the council in its deliberation and which we consider this a serious deliberation, recognized that in making this recommendation, because of Miss Horowitz' keen desire to go into postgraduate education, should be presented an alternative. And it was at this time that I met with a Dr. Baeder, who was a doctor in pharmacology at the University of Missouri-Kansas City with Miss Horowitz and I think Dr. Sirridge was there and possibly Dr.

Noback, I can't remember that detail. It was at this time that we offered to Miss Horowitz an opportunity to alter her professional career, go ahead and get a PhD in pharmacology, emphasizing that the whole team approach **[460]** of health care, and there are plenty of examples of this, in which a doctor as a basic scientist in pharmacology could be a member of a health care team in which she could then pursue her research years in psychopharmacology as well.

Q. Dr. Smull, what was Miss Horowitz's response to that statement? A. Miss Horowitz said that she was not interested in that, that she was only interested in an MD degree, she was not interested, as I remember, in being a team member. As I remember her almost exact words were that she wanted to go into psychopharmacology, she wanted to experiment with humans on drugs, she wanted to use drugs on humans for experimental purposes, she wanted to have that sole decision. Those are the words as I remember them.

Q. All right. Now, Dr. Smull, did the Council on Evaluation then receive in May evaluation obtained from seven physicians here in the Kansas City area? A. Yes. I think that here again to reemphasize the distinction it was appeal of nongraduation on Miss Horowitz's part for which these seven evaluations outside of the medical school per se were given. I think that the Council on Evaluation at no time considered those seven examinations in any sense toward her ultimate dismissal from the school. We considered these seven **[461]** evaluations as a part of to sustain or not to sustain our decision or our recommendation for her not to graduate in June. I don't know whether I'm making sense there or not but it was——

Q. Right. And, Doctor, how did you tally up, so to speak, the seven doctors, how many of them recommended graduation? A. Well, five clearly recommended nongraduation, one clearly recommended graduation, another clearly recommended

graduation but said she was not competent to graduate. So that five clearly recommended that she shouldn't graduate if you read it by the letter of the latter and in an absolute fashion two recommended she graduate, but one of those said she should graduate but wasn't competent.

Q. All right. Now, Doctor, I believe that her docent William Sirridge has testified that he recommended she graduate. A. That's correct.

Q. Now, did he appear before your council and make that recommendation? A. That's correct.

Q. Now, will you tell me why the council did not follow his recommendation? A. Because as a part of Dr. Sirridge's honest recommendation **[462]** before the council, honest belief, his belief was that she should graduate because she had a bona fide commitment, a valid, honest desire to go into psychiatry. The council's position again was constantly—was consistent, we felt that it was irrelevant, really, what she was to do following graduation, that our responsibility was what she was going to do now, how her performance measured up to now. And so each time Dr. Sirridge recommended graduation he always qualified it by saying, "I recommend it because she's going into psychiatry, she doesn't need the kind of things that you're requiring her to have."

Q. Did Dr. Sirridge give his opinion to your council as to whether or not he deemed her to be a qualified, safe physician? A. He did, on numerous occasions.

Q. What was that opinion? A. And that he deemed her to be not a safe physician.

Q. Now, Dr. Smull, I believe that your Council on Evaluation again met in—excuse me, withdraw the question.

Did the Council on Evaluation affirm their decision of nongraduation following the receipt of the seven evaluations from doctors? A. That's correct.

Q. Now, did that council again at a later date in May convene for the purposes of discussing whether or not **[463]** Charlotte Horowitz should be continued in school? A. Yes.

Q. And, Doctor, what was the conclusion of the council? A. The council again in reviewing all the data that had developed subsequent to its recommendation in December, carefully considered all the information, found no evidence that there had been radical improvement in the areas specified in our original recommendation. Therefore, felt that because of the total support that we felt that the school had given to Charlotte, the responsibility that the school had to society, that there was no reason to continue her in this educational process any longer and it was for that reason that we recommended to the dean that she be terminated from the school.

I think I'd like to make the point if I may again, Mr. Wright, that we recommended continuation in the school from December through June, or to June, she was on probation. That indeed at that point was an extension of again giving her an opportunity to develop and to with our help and faculty's help, to develop a radical turnaround, which did not occur.

Q. Dr. Smull, do you know of any member of the Council on Evaluation that was biased or prejudiced against Charlotte Horowitz because she was a woman? A. Absolutely not.

[464] Q. Because of the fact that she's of the Jewish faith? A. Absolutely not.

Q. Because of her physical appearance, laying aside cleanliness and hygiene? A. No.

Q. Doctor, were you biased or prejudiced against Charlotte Horowitz for any reason whatsoever? A. Absolutely not.

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[469] Q. As you recall the meeting isn't that correct, that there was no one there on behalf of Charlotte Horowitz? A. Mr. Benson, what I was trying to imply was that at some point,

and I cannot remember when, student representatives became a part of the Coordinating Committee. Apparently they were not there (indicating). What I was trying to imply was that this could be interpreted as an advocate for Charlotte. But the design of the Coordinating Committee has never been that students who are under **[470]** consideration would be there.

Q. Either in person or by representative? At least as long as Charlotte was in the medical school, it may have changed since then but up to that time—— A. That's correct.

Q. ——up to the time she was dismissed the concept of the Coordinating Committee did not include either appearances by the student nor by the student's representative? A. That's correct, if you say that the student's representative was her, his or her, decent, there would——

Q. Or anyone selected by the student? A. To represent the student per se?

Q. Yes. A. That's correct.

Q. No such person was at the meeting? A. That's correct.

Q. Nor contemplated by the rules? A. That's correct.

Q. And she wasn't advised in advance of this meeting of the Coordinating Committee on June 4th that it would meet? A. I have no knowledge of that.

Q. Are you aware of any rules or procedures setting out how an appeal would be taken by a student from any decision of the Council on Evaluation? A. No, I'm not.

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DEPOSITION OF CHRIS FAIRBANKS DENNIS,

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[3] **CHRIS FAIRBANKS DENNIS,**
(of lawful age, being produced, sworn, and examined on behalf of the Plaintiff, deposeth and saith:)

Direct Examination by Mr. Benson

Q. What is your full name? A. Chris Fairbanks Dennis.

Q. Where do you reside? A. 8010 Greenwall Drive, Belton, Missouri.

Q. Are you a doctor? A. Yes.

Q. Dr. Dennis, where are you currently employed? A. K. U. Medical Center.

Q. In what capacity are you employed? A. Resident in anesthesia.

Q. How long have you been at K. U. Med Center? A. Two years as of July 1, '75.

Q. As a resident? A. Yes, sir.

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[4] Q. Okay. What degrees have you earned in your education? A. I have a Bachelor of Science degree from UMKC. I completed the requirements for a Master of Science degree at UMKC. I did not receive the degree as yet. [5] I have an M.D. degree from UMKC.

Q. When were you admitted to the medical school at UMKC? A. My letter of notification was in August of '71.

Q. When did you enroll, or when did classes begin? A. September of '71.

Q. Of 1971? A. Uh huh.

Q. Were you admitted with advanced standing? A. I was.

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[7] Q. Did you have opportunities to observe her and her relationship with her peers, and with the faculty during that year and a half? A. I had a chance to observe her as a friend, and in so observing, see the relationships that you talk about. I wasn't looking for anything, in other words.

Q. How would you describe Charlotte Horowitz in terms of her relationships with her peers, her classmates? A. She was the class joke.

Q. In what regard was she the class joke, or in what manner was that manifested? A. Partly because of being a woman, more so by being the oldest student—even more so by her physical appearance. All put together, she became the topic of many coffee cup casual type conversations and the brunt of many jokes and criticisms that the fellow students had.

Q. What was it about her physical appearance that contributed, in your opinion, to making her the class [8] joke? A. Charlotte had what could be described as an ill kempt hairdo with some graying streaks. She was overweight. She did not shave her legs. She wore, many times, the same—wrong—she didn't seem to have a large wardrobe from which to select, so many times she showed up in the same garment—not days at a time, but she just didn't seem to have a variation that other people had. She also wore, many times, what was definitely a yellowed lab coat. I don't know whether that is from age or what. It never smelled bad, but, because of these physical characteristics plus a slight lisp and protruding incisors, all physical, she was just sort of shunted away in most people's minds, over in a corner.

Q. When you say her slight lisp, are you referring to the characteristics of her voice? A. Yes.

Q. All right. Were there any other characteristics of her voice, other than a lisp, which were unusual in the setting of the medical school? A. She seemed to hang onto the sound of some words as she spoke. I dont' know how to put it other than that. She sort of prolonged the sound at the end of a sentence, occasionally—especially when she was trying **[9]** to make a point or talk seriously. This was not an impediment. This was just a peculiarity, distinct to Charlotte.

Q. How would you rate her appearance, especially, say, her physiognomy, in a scale from attractive to unattractive, or however you would care to describe it? A. With attractive being ten, Charlotte was probably a one.

Q. In your opinion, did that low rating on the scale of attractiveness contribute to her being a class joke, as you put it? A. Definitely.

Q. How was that characteristic of being a class joke manifested with regard to her relationships to classmates? A. In very general terms, when classmates would get together and discuss what a physician should be or should look like, more important they look like, Charlotte was always held up as an example of definitely what one should not look like.

Q. By whom was she held up in those terms? A. This was, as I say, was a general——

Q. I'm not asking for names of people, but faculty or students or—— A. Both.

[10] Q. Residents, interns? A. All—this was a general sort of thing—because of not shaving her legs, and her general obese appearance. She was labeled as a "probable", in a joking sense Stein-Levinthal, which is a medical term for a masculizing female disease. Just another derogatory type of label for Charlotte, more than anything else.

Q. Did some students make an effort to get to know Charlotte? A. Some students made an effort to get to know Charlotte: Frank Brown and I got to know Charlotte, not socially, but so far as coffee cup conversations and sharing the trials and tribulations or what-not. The two of us got to know Charlotte. I would say that other students, myself included a little bit, were reticent to show our knowledge of Charlotte in public, for fear of criticism from other people around us; other people meaning faculty, rather than other students, and so on.

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[14] Q. Do you know who Jerry Burton was? A. Yes.

Q. Who was he? A. Jerry Burton was a PhD in pharmacology, and I had an opportunity to work with him a year previously when I was working on my Master's at UMKC, so we were **[15]** acquainted when we both arrived at UMKC Medical School.

Q. Did he have any role to play in the evaluation of the performance of medical students? A. Jerry was elected to the Evaluation Council as a student member.

Q. By whom was he elected? A. The students had a general election, ultimately, as to who would be on these committees.

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[18] Q. How did Jerry Burton get along with Charlotte Horowitz? A. Jerry Burton was a very outspoken critic of Charlotte. Jerry made no bones about the fact that he wanted Charlotte out of the medical school. In this regard, Jerry parroted Bob Mosser a lot. Jerry was on Bob Mosser's team and was accelerating by brown-nosing Mosser.

Q. Do you know what factors led Jerry Burton to, as you put it, want Charlotte out of the medical school? A. Jerry as a person was very critical of others about him that were not in his general clique. Charlotte exhibited the extreme of the periphery, and Jerry, I believe, came down on her for this reason. It was the in-vogue thing to do, and certainly in keep-

ing with brown-nosing the system, Jerry couldn't very well make a friend of Charlotte.

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[19] Q. (By Mr. Benson) Did you ever hear him express any feelings or belief concerning Charlotte's physical appearance? A. Just that she was filthy. She did not look like a physician. How could anyone like this establish a rapport with patients, especially if—going into psychiatry, where a one-to-one, doctor-patient relationship is very important.

Q. These are statements—— A. These are statements by Jerry Burton to me.

Q. In your opinion, was Charlotte filthy? A. Charlotte was unkempt.

Q. In reference to what, her hair, or her legs? A. Charlotte didn't take care of her hair. Her legs may or may not have been in style, many women don't shave **[20]** their legs. The clothing appeared soiled, that she wore—meaning the lab jacket and what-not, but she never smelled peculiarly. She did have some bad practices, such as sniffing her nose, or on occasion, perhaps, picking her nose in public, but that's really all I can say. I wouldn't say she was filthy.

Q. Most of the items you have listed in terms of her being unkempt, as you put it, aren't directly responsive to the question of filthiness. Let me put it this way: Was she not cleanly? A. You mean in terms of washing her hands at the appropriate time?

Q. Yes, and bathing and utilizing deodorant, and similar factors? A. Like I say, I never noticed any body odor from Charlotte, therefore——

Q. Did you have opportunity to? A. Well, being friendly with Charlotte, I was probably closer than most of the students to Charlotte in range of my nose, at any rate. And from that observation I can't say that—what her bathing habits, were, I

can only surmise that they were at least adequate to keep the body ordor from becoming evident.

Q. In terms of washing, you started to say washing at the **[21]** appropriate—— A. Washing at the appropriate time, I never really had any occasion to notice whether she did or didn't. I never noticed her fingers to really be soiled. I think on occasion there was some grime, perhaps, under her fingernails, but, now, I am trying to remember far back, and I would say that she never left me with a definitely filthy impression.

Q. Setting aside items such as unkemptness that you referred to. A. Yes.

Q. Would you say that Charlotte generally was adequately clean, as she presented herself at the medical school? A. As I intimated before, because of Charlotte's black hair, some facial hairs and what-not, lack of a large selection in wardrobe, the practice of wearing a yellowed lab coat—and I'm specific here to say yellowed, because I don't know whether it was soiled or yellowed from too much bleach or age or what-not, but all of these items coupled together to give Charlotte the appearance of being less clean than other medical students, or less kempt.

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DEPOSITION OF DR. MARY HOWELL

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[3] **DR. MARY HOWELL**

was called as a witness, by and on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Benson:

Q. Please state your name? A. Mary Howell.

Q. Where do you reside? A. In Newton, Massachusetts.

Q. Are you a doctor? A. I am a medical doctor, an M.D., and also a Ph.D.

Q. Do you prefer to be called Dr. Howell? A. Or Mary.

Q. Or Mary Howell? A. Yes.

Q. Dr. Howell, where did you get your undergraduate degree? A. At Radcliffe College.

Q. What was that degree in? A. In Linguistics.

Q. What year did you receive that degree? A. 1954.

[4] Q. Did you pursue your education beyond your degree at Radcliffe? A. Yes. I earned a Master's Degree in Child Development at the University of Minnesota in 1958; a PhD in Child Development at the University of Minnesota in 1962, and in the same year an M.D. at that same school.

Q. Did you complete an Internship? A. At the University of Minnesota Hospital in Pediatrics.

Q. What year was your Internship? A. The year of 1963.

Q. Have you had a residency or specialized in medicine? A. I have not had a residency.

Q. Have you had any appointments with medical schools since your graduation from the University of Minnesota? A. I have had a Faculty Appointment beginning with Instructor and then as Assistant Professor in Pediatrics at Harvard Medical School, beginning in 1969 until the present, and simultaneously another Faculty Appointment at the School of Education. I have held two Faculty Appointments at Harvard.

Q. The Harvard School of Education is one, and the Harvard Medical School is another? **[5]** A. That is correct. As both a psychologist and a pediatrician.

Q. You taught psychology at Harvard—— A. School of Education.

Q. And pediatrics at the Medical School? A. Yes.

Q. Have you been a member of the Administration of any medical school? A. I have been Associate Dean at Harvard Medical School from 1972 through 1975, until two weeks ago when I retired from that position. Did I say that I graduated in 1972? I think I may have. I should have said '62.

Q. I believe you said '62, from the University of Minnesota? A. Yes.

Q. Has your Deanship at the Harvard Medical School during the years 1972 to 1975 had a particular title or focus? A. I have been an Associate Dean in Student Affairs and have been serving in all of the administrative capacities that have to do with student matters, as they go through the medical school, and also in **[6]** relation to postgraduate students.

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[15] Q. Do you have an opinion as to whether the evaluation system or the procedures utilized in the evaluation of Charlotte Horowitz at the University of Kansas City Medical School were substantial prejudicial to Charlotte Horowitz because of her sex? A. There is some evidence to that effect. Let me divide that into two parts. First of all, I have extensive counselling experience with individual students, both men and women, and I have some considerable research experience in this particular topic, and based on that background I would say without question that the policies and procedures of that medical school are probably prejudicial on the basis of sex, because they are every place and everywhere and I have yet to find a school, a medical school or any other school, where that is not the case. Specifically there is evidence with this regard to Charlotte in regard to her appearance, which continues to run through all of this evidence as a thread of concern, at the very least, on the part of people

evaluating her, in a way that would not be done for a male student. That is that there is in our society—I am not speaking to the malice of **[16]** individuals—but in our society there is a standard of appearance that is applied, I think with special vigor to professional women, and not that kind of standard is used for the men. The fact that Charlotte did not conform to the usual portrait of a professional woman, and worse yet, didn't seem to care or feel remorse about that, seems to me to be a very important thread in her evaluation.

Q. Specifically in what way did she not measure up to the societal expectations? A. Well, let me say that it has traditionally been said, and I think there is some evidence to support it, that it is all right for women to come into traditionally male professions as long as they do better than anyone else. And that would mean in this particular instance that Carlotte be quietly presentable in her personal appearance, and the standard for professional women is not that they look glamorous and sexy but that they look relatively severe, hair pulled back, attractive, well dressed. Charlotte apparently had relatively few clothes and tended to wear the same kinds of things. She is somewhat heavy. She is a large boned woman from the photographs that you **[17]** showed me. Her hair is long rather than neatly pulled back, and in fact she is an ordinary and I think a rather nice looking woman. But she does not conform to what I am sure you all identify as the standard of professional female appearance, and furthermore she clearly made no effort to do that to herself.

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[19] Q. From the documents you have read and reviewed, are there indications that these sex role stereotypes were operative at UMKC Medical School? A. It seemed clear, running through the whole thing, that her appearance and her demeanor, her bearing, were the source of embarrassment, confusion and funny jokes. Several people say that she was the butt of a lot of jokes. She had another tremendous advantage, but it is a disadvantage

in a medical school climate and academic climate, and that is that **[20]** she is very bright, and that she had a very excellent memory, and that she knew the book part of her learning very solidly. You know, we are all instructed by the time we reach high school that you are not to win the tennis game and you certainly shouldn't come up first in math class.

Q. To whom are you referring when you say "we"? A. We women. You know I presume that girls tend to do as well as boys and perhaps a bit better in grade school, and it is when they hit high school that women's math learning falls off and it is at the same time that they are instructed by society generally and their peers and their parents, that you don't beat men at men's things. Charlotte didn't take part in that stereotypic kind of behavior and she did very well, and in fact I think she is apparently as competitive as most medical students, and in fact she came out on top, and that's an embarrassment and a source of anger.

Q. Is being a medical student or a physician a man's thing? A. It is a male profession, yes, in this society. It is not in other societies, but it is in this society. For years there was a defacto quota of about seven **[21]** percent women, in the medical profession.

Q. Is it changing now? A. It is changing, but only in the last four or five years.

Q. To the extent that Charlotte did not conform to the sex role expectation and attempted to enter what you describe as a male profession in this society, what sort of conflicts arose from that confrontation? A. Well, in the eyes of those who observed her, I know as a fact from other students and I am now inferring from what I have read about her, that there was some confusion about how to deal with her. She is not a typical physician because she is not a man. She is not a typical woman because she is going to be a physician and because she doesn't care about her appearance. That is an improper word. She doesn't care

that she doesn't look like a stereotype, quietly glamorous woman professional. So she is then an anomalous kind of person, and she can't easily be fit into a niche, and for students and residents who are under considerable personal pressure as such, that I think it brings forth some rather maladaptive behavior on their part. It was **[22]** very easy to make her the butt of jokes and to exclude her from conferences, to overlook things that she said. But this doesn't just happen to Charlotte, it happens to all women in medical school.

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[51] Q. Would allowing a student to attend a committee hearing at which a student's status in the medical school was being evaluated, in any way interfere with the education mission of the institution? A. In no way that I can determine.

Q. Similarly, would allowing a student to question members of the committee with regard to that students own status at the school interfere with the medical mission of the school? A. In fact, I think it might promote it. The mission of the school is to turn out at the other end, a student who has been enabled to learn and that would then be a learning experience for a student to understand what **[52]** those evaluations have been. And of course, a prior step and a more important step is for there to be frankness in evaluations of students, all along the line at every point.

Q. Would it interfere with the mission of the institution to advise students of derogatory evaluations received by the committee concerning the student? A. No, it would promote it. I am sure you know better than I that federal law now mandates that, but that does not apply in this case.

Q. Do you have an opinion as to whether allowing a student to rebut derogatory information that may appear in documentary form before an Evaluation Committee, whether such

an allowance would interfere with the mission of the institution? A. No, it would promote the educational mission of the school.

Mr. Benson: You may inquire.

Cross-Examination

By Mr. Wilkins:

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[72] Q. Based on the information which you have reviewed, do you have an opinion as to whether Charlotte Horowitz was given an adequate opportunity to acquire the clinical skills that it is now claimed she is deficient in? A. She was only at that school two years. Most medical schools in the course of the regular curriculum give students two to two and a half years of exposure to patients in clinics and hospitals and most schools that I know of, very readily and comfortably give a student an additional year. That is three and a half years. I am talking now about standard practices.

Q. You say that is a standard practice? A. I am saying that at most schools it is relatively easily arranged so that the student takes an additional year. That means when you are talking about a four curriculum, that means the student has the option of **[73]** an additional year—three to three and a half years to learn clinical skills and patient contact, attitudes and so on. I would say that a period of two years time is very swift and I am surprised that she was not offered an additional period of some months or perhaps even a full year.

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[81] Q. Based upon these responses that you described of Charlotte at the Medical School, can you from those responses draw inferences as to—draw an inference **[82]** as to whether Charlotte was facing structural bias based on her sex, at the medical school? A. The exclusion from the doctors lounge is a clear instance. The deposition of the student with regard to how faculty and other students make fun of her. That con-

stitutes an exclusion from learning groups. The evidence is there of discrimination against her as a person and because of this steady thread of comments about her appearance, I think that also further means that that discrimination is based in part on the fact that she is a woman.

Q. Do you have an opinion as to whether Charlotte was substantially or greatly prejudiced by these factors in terms of acquiring the requisite clinical skills? A. My opinion is, yes, that that kind of a learning situation makes it very difficult for one to learn to capacity. In addition, I gather from some bits in the evidence that she was sometimes actually excluded from learning opportunities. You can't learn if you don't have patients to learn with.

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DEFENDANT'S EXHIBIT 8

July 5, 1972

Miss Charlotte M. Horowitz
c o Menninger Clinic
c o Dr. Lacoursiere
Topeka, Kansas 66606

Dear Miss Horowitz:

This letter follows our long discussion together on this past Saturday afternoon. I would like to suminarize here the points which we covered in our discussion and which I reviewed at the end of our meeting.

The Council on Evaluation has completed a mature review of the records of all of the Advanced Standing students. Your

acquisition of information is good. Your relationship with others has not been good and represents a major deficiency. You need to improve your relationship with others rapidly and substantially. This involves: keeping to established schedules; meeting all clinical responsibilities on time and gracefully; attending carefully to personal appearance including hand washing and grooming; participating appropriately in the activities of the School; and directing criticisms and suggestions maturely to your Docent and to the faculty member who is in charge of a curriculum block as you may have criticisms and suggestions.

In order to be clear and to be constructive, I would like to repeat the importance of these concerns. The medical degree requires knowledge as well as high standards of personal conduct. Each is essential. The absence of either is incompatible with continued progress and graduation. Therefore, you are on probation.

As I told you, you are to be considered a Year 6 student when the new academic year begins on August 28. In the information from my office about Advanced Standing students, I am not including the notation that you are on probation.

Your response to our meeting and your ability to improve your relationships with others are measures of your capability for medicine. I hope and believe that you will be able to make the necessary improvement. I know that your Docent continues to be available and very willing to help you in this respect at this time just as he has in the past months.

Very sincerely yours,

Richardson K. Noback, M.D.

RKN:j

cc: Dr. William Sirridge

DEFENDANT'S EXHIBIT 9

University of Missouri-Kansas City
School of Medicine

Kansas City, Missouri 64108

Telephone
(816) 474-4100

February 7, 1973

PERSONAL AND CONFIDENTIAL

Miss Charlotte Horowitz
University of Missouri-Kansas City
School of Medicine
Health Sciences Building
Kansas City, Missouri

Dear Miss Horowitz:

This letter follows the recent, long and detailed meeting in which Dr. Sirridge, Dr. Smull, and I discussed your progress in the Medical School.

To review briefly, we told you that your progress has been reviewed very carefully and at length by the Council on Evaluation. That Council made recommendations to the Coordinating Committee. The Coordinating Committee accepted the recommendations of the Council so that the following decisions have been reached: your progress has not been sufficient to show the improvements called for in my letter to you on July 5, 1972; for these reasons, you are being continued on probation; it is not possible for you to be a candidate for graduation in May of this year; and you must make very marked and very substantial improvement in several areas. These are: clinical competence,

peer and patient relations, personal hygiene, and ability to accept criticism.

This means that these very substantial and marked improvements must take place and be satisfactory to the Council on Evaluation or you will not be able to continue in the Medical School after May of this year.

The statements in the previous paragraphs are clear and direct to avoid any possible misunderstanding even though we both recognize that in our meeting these same points were discussed with you several times.

The faculty of the Medical School does hope that you will be able to make the improvements that are necessary. Those of us who met with you tried to make clear that we and other members of the faculty have very real interest in your progress and would like to help you in any way that we can.

Toward the conclusion of our meeting the point was made that you have the option of requesting a special set of oral and practical examinations as an appeal of the decisions which were discussed in our meeting and are set forth in this letter.

I advised you to consider this possibility carefully for several days and then let me know if you would like to make such an appeal.

Very sincerely yours,

/s R. K. Noback
Richardson K. Noback, M.D.
Dean

RKN:j

cc: Dr. William T. Sirridge
Dr. Ned W. Smull

DEFENDANTS EXHIBIT 10

University of Missouri-Kansas City
School of Medicine

Kansas City, Missouri 64108 Telephone (816) 474-4100

MEMORANDUM

To: Dean Richardson K. Noback

From: Charlotte M. Horowitz

This is to reiterate what I told you last Wednesday, namely, that I wish to appeal the decision of the Council on Evaluation.

If I may bring you up to date on other matters, I have been offered a faculty appointment in the Department of Psychiatry to the University of North Carolina at Chapel Hill. I would in part be involved in doing research with the Chairman of the Department and the Director of Research Development. As you probably know, UNC has, for years, had one of the top 10 psychiatry departments in the nation. The Department would like for me to begin work on July 1. The M.D. degree is prerequisite to these arrangements.

I plan to take a residency in psychiatry the following year. Also, I plan to be married to a physician on June 7, and should like to remain on the east coast thereafter.
February 9, 1973

s Charlotte M. Horowitz

cc: Dr. William T. Sirridge

DEFENDANTS' EXHIBIT 11

University of Missouri-Kansas City
School of Medicine
Kansas City, Missouri 64108 Telephone (816) 474-4100

March 15, 1973

Miss Charlotte Horowitz
University of Missouri-Kansas City
School of Medicine
Kansas City, Missouri

Dear Miss Horowitz:

In response to your recent request and in keeping with the Academic Plan I have asked seven experienced physicians to serve as a panel to provide a careful, detailed, and thorough assessment of your abilities at this time. The School is asking each of these physicians to conduct such an impartial, careful, and searching assessment of your present competence. For the clinicians this will involve spending several hours with you as you examine one or more patients with each of these physicians and as you discuss the cause, manifestations, pathophysiology, course, and management of the problems of the patient or patients whom you will see. The pathologists may use clinical protocols, slides, and other laboratory items to lead into similar discussions.

The following list contains the names of these physicians, the general topic in the curriculum about which we are asking them to evaluate your performance, and their office telephone numbers.

Dr. Richard D. Blim, Pediatrics, 561-8100
Dr. Hilliard Cohen, Pathology/Anatomy, 861-4700 X327
Dr. James E. Crockett, General Medicine, 931-1884
Dr. Mark Dodge, General Medicine, 531-0552
Dr. Raymond W. Latham, Pediatrics, 561-6060
Dr. Robert L. Newman, Obstetrics and Gynecology, 932-2047
Dr. Mark D. Ost, Pathology/Anatomy, 361-3500 X345

I am asking each physician to observe you as you go through those steps and procedures appropriate to a Year 6 student and evaluate the extent of your mastery of relevant concepts, knowledge, skills, and competence to function as a physician. I am asking them to use such steps as observing you as you evaluate a patient by taking the history, carrying out the physical examination, collecting and evaluating other data, formulating a problem list, and developing a management plan. I am asking them to discuss with you the patient's situation and illness to determine the extent of your information as well as other aspects of clinical competence. This may involve discussing the cause, manifestations, pathophysiology, course and management of the problems of one or more patients.

At this point I am asking you personally to make contact beginning on Monday, March 19 with each physician on the list to arrange a satisfactory time for this set of oral and practical examinations. The physician's office or his hospital may provide the setting and the patients to be examined. If the physician prefers, the setting may be at one of our affiliated hospitals. You should plan on several hours to a half day for each of these sessions. Please keep your Docent informed.

At the end of your experience with each of these physicians the School is asking the physician for a careful written statement of his recommendations and the reasons for his recommendations. The recommendations of your examining panel

will then go to the Council on Evaluation. That Council will make its recommendatons to the Coordinating Committee.

In this way the School has established a careful, deliberate, and impartial process to provide recommendations about your status at this time. On a personal note, I would like to encourage you to look forward to these clinical sessions with experienced and able physicians.

Richardson K. Noback, M.D.
Dean

RKN:j

cc: Dr. William T. Sirridge

DEFENDANT'S EXHIBIT 12

University of Missouri-Kansas City
School of Medicine
Kansas City, Missouri 64108

Telephone
(816) 474-4100

May 18, 1973

PERSONAL AND CONFIDENTIAL

Miss Charlotte Horowitz
University of Missouri
School of Medicine
Kansas City, Missouri

Dear Miss Horowitz:

This letter is to confirm the discussions that you, Dr. Sirridge, Dr. Smull and I had in my office on Monday, May 7, 1973.

As we told you then, the Council on Evaluation has reviewed the reports of the several examinations that you have had as a result of your appeal of the decision of the School that you could not graduate this spring. The Council recommended that the previous decision of the School is sustained. The Coordinating Committee accepted that recommendation.

Therefore, this letter is to tell you again that it is not possible for you to graduate at this time.

As we all discussed in my office, the Council on Evaluation will be considering the extent to which you have improved your performance during this academic year.

Very sincerely yours,

s/ R. Noback
Richardson K. Noback, M.D.
Dean

RKN:j

cc: Dr. William Sirridge
Dr. Ned Smull
Dean's Office File
Student File

DEFENDANT'S EXHIBIT 13

University of Missouri-Kansas City
School of Medicine
Kansas City, Missouri 64108

Telephone
(816) 474-4100

July 6, 1973

Miss Charlotte Horowitz
300 West Armour Boulevard
Kansas City, Missouri

Dear Miss Horowitz:

This letter follows our meeting on Tuesday afternoon, July 3. As we discussed at that time, the Council on Evaluation recommended that you not continue in school after the end of May. The Coordinating Committee agreed with this recommendation and I have accepted it.

Therefore, this letter is to state again the decision of the school that you are no longer a student. Since we have discussed this decision with you thoroughly, I would simply like to make sure that you discontinue all of the activities that were appropriate when you were a student. This means that you have to stop using space in the medical school building, attending outpatient department activities, and engaging in any other types of student functions.

Very sincerely yours,

s/ R. K. Noback
Richardson K. Noback, M.D.
Dean

RKN:mm

cc: Dr. William T. Sirridge
Dr. Ned W. Smull

DEFENDANT'S EXHIBIT 15

Arnold V. Arms, M.D.
internal medicine
Mark Dodge, M.D.
endocrinology
Arthur W. Robinson, M.D.
internal medicine
Robert D. Wilber, M.D.
gastroenterology
Thomas T. Crouch, M.D.
nephrology

Medical Plaza Building Suite 208 4320 Wornall Road
Kansas City, Missouri 64111
(816) 531-0552

March 29, 1973

Dr. R. K. Noback
University of Missouri at Kansas City
School of Medicine
Kansas City, Missouri 64108

Dear Mr. Noback:

This is in regard to examination of Charlotte Horowitz.

Miss Horowitz hopes to get her M.D. degree and then go into psychiatric research and this will not include an internship. She later then may take a residency in psychiatry.

Today I had her do a history and physical on a clinical problem and she did not demonstrate the usual aptitude of a senior medical student. Her history was completely by rote and she

was unable to formulate a differential diagnosis or plan of diagnostic procedure. I am really unable to say how much of this is due to the way she had been taught or her own lack of interest in the problem. Miss Horowitz would not qualify to intern at St. Luke's where I practice.

In spite of these considerations since she is supposed to be highly intelligent and since she is going into specific research in which she has previously been given high marks, I would be in favor of giving her her M.D. degree and then I would attempt to learn why this problem exists.

By that I mean it would seem to me that she should probably not have been selected for medical school in the sense that she quite obviously would not be an average physician and probably never had any intention of practicing medicine. Secondly it seems to me that her lack of ability to look at a clinical problem reflects something wrong with her ward experience. She does not have anywhere the aptitude of the usual medical student and I am not sure this is all her fault.

If we are to err one way or the other I think probably we should take part of the blame and that this situation should probably happen less often in the future as we gain more experience.

Sincerely,

s Mark
Mark Dodge, M.D.

MD

DEFENDANT'S EXHIBIT 16

Raymond W. Latham, M.D.
421 Plaza Parkway Building
4620 J. C. Nichols Parkway
Kansas City, Missouri 64112
816-561-6060

April 16, 1973

Richardson K. Noback, M.D., Dean,
School of Medicine
University of Missouri-Kansas City
Kansas City, Missouri 64108

Dear Dean Noback:

I conducted an examination of Charlotte Horowitz in my office Thursday morning, April 12. I discussed with her the routine care of a normal newborn infant taking breast feedings. She also obtained a history from a mother and a ten-year-old girl and performed a physical examination in my presence. The patient complained of dysuria and had a significant heart murmur. We discussed in detail the study and treatment of these problems as well as the general subject of physical growth during adolescence. I had planned for her to examine other patients but she was quite slow and I learned what I needed with this material.

Her knowledge of the newborn care and breast feeding procedure was satisfactory. However, I was able to learn this only by directly questioning her. She was not aware of the concept of anticipatory guidance.

Her personal appearance and grooming was satisfactory so far as I was concerned, but it will unquestionably limit the opportunities for her in a medical world. She has a defect in speech which is a handicap in relating to patients and contributes to slowness in work. She is extremely awkward in handling examination instruments which made the patient uncomfortable and made me doubt the quality of information obtained. She was extremely inept in the use of a microscope. She said that she had performed only one urinalysis during her medical school work so that I needed to show her the simple process of centrifuging, separating the supernatent fluid, and examining the sediment. She also said that she had never seen a urine sediment containing cellular elements nor performed a complete blood count.

The information she obtained by history was satisfactory. She detected the heart murmur but her description of it in terms of location, quality, timing, and associated features was inadequate. She failed to examine the patient's genitalia even though the examination room was equipped to do so without undue embarrassment to the patient. In this case it was a serious omission because the patient had vulvitis and a vulvar adhesion. She did perform a rather complete neurological examination but, even when she used the percussion hammer, I was not satisfied that there was a clear demonstration of reflexes. The patient's urine sediment contained 200-300 cells h.p.f., 95% of them white blood cells. Charlotte was unable to differentiate whether she was seeing white blood or red blood cells and she indicated a piece of foreign material on the slide, which had no resemblance to a tubule, was a cast.

Further studies Charlotte suggested with relation to the heart murmur were an ASO titre, a phonocardiogram and catheterization without mention of an X-Ray of the chest nor an E.K.G. Appropriate urine bacteriology was suggested for proper treatment of the urinary infection but urological investigation only

after "repeated episodes". She was in doubt about the type of urological studies indicated.

Charlotte did not compare favorably in clinical performance with numerous other senior students I have worked with as an instructor in pediatric clinics at K.U. M.C. She will have to improve a great deal in examination methods and completeness in study of patient programs before she will be a useful member of a hospital staff. Because of her age, this may be difficult for her. I am certain that she is not presently qualified to receive a medical degree but would hesitate to give an opinion about other alternatives.

Charlotte expressed some criticism of her pediatric courses which, if true, may be worthy of note. She said she had very little exposure to well-baby care. "Two-thirds of the patients I saw in the pediatric clinics were healthy children needing eye examinations; one-third were behavior problems." She reported that she had one patient with a urinary infection similar to the girl I had her examine. Her patient was referred to the urological clinic and she did not find out what studies had been performed. Her lack of skill with a microscope and simple laboratory methods may be a result of her divided medical school curriculum.

Sincerely yours,

/s/ R. W. Latham, M.D.
R. W. Latham, M.D.

RWL/cw

DEFENDANT'S EXHIBIT 17

RICHARD DON BLIM, M.D.
Practice Limited to Care of Infants and Children
Medical Plaza, 4320 Wornall Road
Suite 116
Kansas City, Missouri 64111
Telephone 816—561-8100

April 16, 1973

Richardson K. Noback, M.D.
Dean, University of Missouri-
Kansas City School of Medicine
Kansas City, Missouri 64108

Dear Doctor Noback:

In response to your letter of March 15, 1973 the following report regarding Charlotte Horowitz is respectfully submitted.

The methodology, as suggested in your letter, was followed. Miss Horowitz was given two patients from the Emergency Room of Mercy Hospital. She proceeded with history taking, examination and eventual discussion of the current disease process and discussion of treatment.

As a result of approximately 2½ hours having been spent with Miss Horowitz in the clinical setting, I found that she demonstrated substantial deficiencies, i.e., she appears to have no concept of proper history taking, even lacking the ability to ascertain the "chief complaint", and even more difficulty in obtaining any "history of the present illness"; and she has no concept or ability to perform a physical exam. She has not ade-

quately mastered the ability to develop a problem list or differential diagnosis and, of course, cannot develop any reasonable suggestions for further testing and/or therapy.

As a result of the above, it is my firm recommendation that she be dropped from the medical school.

Sincerely,

/s/ R. D. Blim, M.D.
Richard D. Blim, M.D.

RDB:omt

DEFENDANT'S EXHIBIT 18

Veterans Administration
Hospital
4801 Linwood Boulevard
Kansas City, Missouri 64128

April 19, 1973

In Reply Refer to: 589-151

Richardson N. Noback, M.D.
Dean
University of Missouri-Kansas City
School of Medicine
Kansas City, Missouri 64108

Dear Dr. Noback:

In accordance with the guide lines of your letter dated March 15, 1973 and our meeting on March 19, 1973 at St. Luke's Hospital, I met with and examined Charlotte Horowitz on Monday, April 16, 1973. The examination lasted 2½ hours, from 9:00 a.m. to 11:30 a.m.

The following diseases and material were covered: (1) myocardial infarct; (2) berry aneurysms of the circle of Willis; (3) chronic lymphocytic leukemia; (4) systemic lupus erythematosus; (5) multiple myeloma; (6) alcoholic cirrhosis of the liver; (7) chromosomal patterns.

For the majority of diseases I projected 2 x 2 color slides of gross organs and photomicrographs. In the case of cirrhosis, a gross piece of liver preserved in formalin and a slide of microscopic preparation of the liver were available for examination. Prints of chromosomal spreads arrested in metaphase by colchicine and karyotypes were available for viewing. In general, for each of the diseases the plan was something like the following: preparations of gross organs and tissues and microscopic slides were presented or shown to Miss Horowitz for identification and for description of the lesion present; clinical manifestations of the disease were then discussed; pertinent clinical laboratory findings, basic biochemical and physiological alterations, management and therapy were then considered. At all times clinical pathological correlation and explanation of the abnormal findings at the biochemical and physiological levels and management with rationale were stressed.

For myocardial infarct the evolution of the acute and healed infarct and the major complications including ventricular aneurysm, mural thrombus of the left ventricle with systemic embolization, rupture of the heart and pericarditis were considered. For berry aneurysm of the circle of Willis, subarachnoid and intracerebral hemorrhages secondary to rupture of such aneurysms were discussed. In chronic lymphocytic leukemia findings of peripheral blood and bone marrow and of the abnormal immunologic state, notably hypogammaglobulinemia, and its consequences and the benign nature of CLL in a number of older folks were examined. In systemic lupus erythematosus the clinical features, LE preparations and antinuclear antibodies of blood, the variety of glomerular lesions with examples of

changes by light and electron microscopy and immunofluorescence were demonstrated and discussed. In multiple myeloma alterations in the peripheral blood, bone marrow, electrophoresis of serum and urine, the immunoglobulin abberrations, amyloidosis, and the lesions in bone were presented. We also discussed the type of immunoglobulin aberration in Waldenström's macroglobulinemia. In alcoholic cirrhois we considered the genesis of the fatty liver, the anemia due to folate deficiency and bleeding and the major complications, namely, portal hypertension with its effects on collateral circulation and resulting hemorrhage, splenomegaly and hypersplenism, ascites and hepatic coma. In the chromosomal preparations we discussed the normal male karyotype and the findings in Klinefelter's syndrome.

The spectrum of diseases chosen for this examination, I felt, would give an examiner a pretty good indication of the level of understanding and achievement of a pregraduating student who had no previous knowledge of the nature of the material to be presented. In practically every instance Miss Horowitz recognized the organs and conditions demonstrated. She understood quite well the basic lesions in these diseases, the pathogenesis, and the fundamental biochemical and physiological alterations. She also had an excellent comprehension of the clinical-pathological correlations and the general techniques of therapy and rationale for same. Her discussions were germane, succinct and meaningful. Her responses were honest. When she did not know she honestly indicated that she did not know. There was no guessing and no attempt to impress me with her knowledge. She has an excellent store of knowledge with the ability to impart same. She communicated easily. Her manner is friendly and business-like.

I conclude Miss Horowitz has prepared herself well. Her approach to medicine is both practical and scholarly. She has an extensive store of knowledge which she imparts readily, is not pedantic, is honest and straightforward. On the basis of my

examination, I can come to no other conclusion but that she is performing very satisfactorily, that she should continue on the curriculum schedule and I recommend she graduate at the end of May, 1973. You and your staff are to be congratulated for having such a fine student in your school.

Sincerely yours,

/s/ Hilliard Cohen
Hilliard Cohen, M.D.
Pathologist,
Veterans Administration Hospital
and Professor of Pathology,
University of Kansas School of Medicine

DEFENDANT'S EXHIBIT 19

St. Luke's Hospital of Kansas City
Wohnall Road at Forty-Fourth - Kansas City, Mo. 64111
Telephone 932-2000

March 26, 1973

Richardson K. Noback, M. D.
Dean, University of Missouri-Kansas City
School of Medicine
Kansas City, Missouri 64108
Re: Charlotte Horowitz

Dear Dr. Noback:

Student Horowitz spent three hours with me on Monday morning, March 26th. In the course of those three hours, she was presented with programmed pelvic models for evaluation of her capabilities of performing a pelvic examination and pelvic men-

suration. During this period, discussion was conducted concerning her basic knowledge of pelvic evaluation.

The next one-and-a-half hours was spent with student Horowitz in taking a history and doing a physical examination on a new obstetrical patient which involved the total aspect of the patient including her various complaints, the necessary laboratory procedures, advice and medication, and instructions for the patient.

The next thirty minutes was spent in general discussion of the philosophy of obstetrics and gynecology concerning various disease entities and their diagnosis and management.

Conclusions are as follows: 1. Basic knowledge in the field of obstetrics and gynecology is inadequate. 2. Basic techniques in the field of obstetrics and gynecology are inadequate. 3. Basic evaluation of history taking, physical examination, and organization for the proper care of an obstetrical patient is inadequate.

My recommendation would be that the student not be permitted to graduate at the end of May 1973, that she remain on probation to the end of May 1973 and her performance can be reassessed at that time depending on the evaluation as to whether she should be totally dropped from the school.

Respectfully,

s/ R. L. Newman
Robert L. Newman, M. D.
Chairman, Department of
Obstetrics and Gynecology

RLN dlf

DEFENDANT'S EXHIBIT 20

Baptist Memorial Hospital
6601 Rockhill Road Kansas City, Missouri 64131

Pathologists
Othello Dale Smith, M.D.
Mark D. Ost, M.D.
Margaret B. Scales, M.D., Ph.D.
Biochemist
Harold J. Grady, Ph.D.

April 24, 1973

Richardson K. Noback, M.D.
Dean
University of Missouri-Kansas City
School of Medicine
Kansas City, Missouri 64108

Dear Doctor Noback:

On April 19, 1973, I met with Miss Charlotte Horowitz for approximately 3½ hours. The purpose of this meeting was to assess the student's information and clinical competence as applies in the fields of pathology and clinical pathology. I was then to make recommendations as to whether this student should graduate on schedule in May of 1973, beplaced on probation until that time, or whether she should be dropped from the medical school.

The first 2½ hours of this meeting were given to allowing the student to examine specimens removed from surgical material and autopsy material correlated with the microscopic slides from that material. In addition she was given 3 peripheral blood

smears with appropriate clinical history. The last hour was dedicated to discussing these cases with the student in the presence of Dr. Othello Dale Smith, Dr. Margaret B. Scales and myself. The cases represented material as follows: 1) thrombosed segments of aorta at the bifurcation of the iliac arteries secondary to arteriosclerosis, lung segments from miliary tuberculosis, 2) a uterus with large endometrial polyp, 3) a segment of sigmoid colon with infiltrating ulcerating adenocarcinoma, 4) a large mucus producing adenocarcinoma metastatic to lung, 5) a gallbladder showing cholesterolosis, mild chronic cholecystitis and large cholesterol gallstone. The blood smears were: 1) severe iron deficiency anemia, 2) chronic lymphatic leukemia, 3) erythroblastosis fetalis.

GENERAL EVALUATION OF STUDENT

It was a concensus of the three of us that this girl has a flat affect. Her physical appearance was somewhat obese and relatively unkept. I was struck by her relative lack of confidence. We all three questioned that this person should have been accepted into medical school in the first place.

EVALUATION OF BASIC KNOWLEDGE OF PATHOLOGY

This examination was relatively informal. The slides were projected for the student and she was asked particular questions, eg Identify calcification within the sclerotic media of the aorta. Identify the thrombus therein. Describe what you see when looking at a granuloma of miliary tuberculosis with particular reference under the microscope to a rather typical Langhans type giant cell and focal central caseation necrosis. Describe demonstration of the histology seen in a slide with normal colonic mucous membrane with transition into adenocarcinoma. Her pathology knowledge seemed to be borderline. She was

unable to recognize the colon sections as colon and interpreted it as carcinoma of the stomach. She was unable to state that the thrombus in the aorta was thrombus rather than embolus. She interpreted the miliary tuberculosis as pneumonia and was unable to recognize the significance of a typical Langhans type of giant cell and was unable to recognize it. Her interpretation of the miliary tuberculosis specimen was lobar pneumonia. She totally missed the interpretation of the hemolytic disease of the newborn and interpreted the nucleated red cells as acute leukemia. She was able to diagnose the iron deficiency, but was only moderately successful in outlining an adequate clinical course when given a clinical problem such as iron deficiency anemia in a patient with upper and lower GI series and occult positive stools. Charlotte's answer was that she would refer this case to a specialist.

STUDENT'S INTERPRETATION OF OUR EXAMINATION

We went over the cases at the end of our evaluation with the student. When asked to evaluate the examination she felt that our exam was fair. She did state, however, that in her pathology training she had very little microscopic slide work as well as little gross work. She felt that questions were generally **not** geared to the course in pathology that she had had.

OVERALL EVALUATION OF THIS STUDENT

It was our feeling that the cases presented were simple every day routine cases, i.e. those seen in an average physician's office. We felt that the student was unable to correlate facts to disease processes. We were uneasy about the student's affect and we questioned whether she would have adequate ability to examine a patient, to order the appropriate tests and correlate the information received. We further felt that we would have little confidence in her either medically, psychiatrically or socially.

(We understand that she is preparing for a psychiatric residency and we particularly feel that in this area we would have little confidence in her.)

Dr. Scales felt that her knowledge of pathology, although marginal, was adequate for a senior medical student. However, Dr. Scales did not feel that she would want to have her as a house officer in a hospital with which she was affiliated.

FINAL RECOMMENDATION

Based on the foregoing examination it is my feeling that Charlotte should **not** be graduated from your medical school in May of 1973. I further doubt whether any additional remedial work would be adequate in solving her basic problems which seem to be ones of personality and inability to correlate information. Accordingly it is my recommendation that this student should be dropped from the medical school.

I would be most happy to meet with you and expand any of these statements at your convenience.

Sincerely yours,

/s/ Mark D. Ost, M.D.
Mark D. Ost, M.D.
Pathologist

MDO:ko

cc: Martin Swerdlow, M.D.

DEFENDANT'S EXHIBIT 21

James E. Crockett, M.D.
Ben D. McCallister, M.D.
David R. McConahay, M.D.
410 Medical Plaza
4320 Wornall Road
Kansas City, Mo. 64111
Telephone 931-1884

Adult and Pediatric
Cardiovascular
diseases

May 4, 1973

Richardson K. Noback, M.D.
Dean, University of Missouri—Kansas City
School of Medicine
2220 Holmes
Kansas City, Missouri

Re: Horowitz, Charlotte

Dear Dick:

Mis Horowitz spent the afternoon of May 3rd with me in my office seeing and evaluating new and return patients and reading electrocardiograms. During this period of time I had her do complete histories and physicals on two new patients and help with the evaluation of three return patients. We also interpreted approximately 20 electrocardiograms. In addition to this, I spent approximately 90 minutes with her discussing her previous experience and her evaluation of the patients seen in the

office as well as general questioning and discussion relative to the general field of cardiology and internal medicine with specific discussion of several areas within the field of cardiology.

I have reached several conclusions about Miss Horowitz as a result of this necessarily brief experience. These are:

1. Her fund of knowledge in the areas covered is quite inadequate. She has no grasp of basic concepts in cardiovascular diseases and was quite unable to answer many questions which I would have considered basic knowledge. She is completely uninformed in the field of electrocardiography. While I realize this is a sub-specialty discipline in cardiology, I have had extensive experience with medical students in the Junior and Senior level of the standard curriculum over the past ten years and her knowledge, in comparison with the average Junior student, is substandard.

2. Her histories as recorded appear quite satisfactory. However, on careful probing of the patient I discovered many facets of importance which she had not developed. She had accepted at face value a young man's statement that he had suffered three episodes of rheumatic fever. On questioning it developed that he had never experienced any of the classic symptoms of rheumatic fever. I am simply stating that she has mastered the mechanics of history taking but has not developed the skill in this field which I would expect of a Senior Medical student.

3. She is completely inadequate in the physical examination of the heart and vascular system. She does not understand cardiac auscultation and either missed murmurs completely or mis-timed systole and diastole. Although she claims a rather extensive experience with hypertension at General Hospital, she does not know the Keith-Wagener classification of hypertensive retinopathy.

4. She does handle problems of deductive reasoning in a very satisfactory manner and this was probably the strongest point in her evaluation.

In summary, her fund of knowledge in the areas covered is woefully inadequate. Her ability at physical examination is inadequate. Her personal hygeine does leave some room for improvement. Although it is extremely difficult to formulate conclusions in such a brief period about relationships with other individuals, I can sense that problems of this type could easily develop. In my opinion, she does not at this time possess the necessary skills and knowledge to perform as a safe physician and it is my recommendation that she be required to continue in the School of Medicine on probationary status for one more year.

I should like to comment that she conducted herself in a pleasant and cooperative manner during this period of evaluation.

Sincerely yours,

/s/ Jim
James E. Crockett, M.D.
Clinical Professor

JEC:ibs

DEFENDANT'S EXHIBIT 22

University of Missouri-Kansas City
School of Medicine

Kansas City, Missouri 64108

Telephone
(816) 474-4100

March 15, 1973

PERSONAL AND
CONFIDENTIAL

To: Dr. Richard D. Blim
Dr. Hilliard Cohen
Dr. James E. Crockett
Dr. Mark Dodge
Dr. Raymond W. Latham
Dr. Robert L. Newman
Dr. Mark D. Ost

The Academic Plan assigns the responsibility for evaluating students to the Council on Evaluation. That Council has made its recommendations about one particular student to the Coordinating Committee which has accepted these recommendations. The student has asked to appeal this set of judgments. Therefore, it is my responsibility to establish an impartial process in which several experienced physicians will be called upon to provide a careful, detailed, and thorough assessment of this student.

Several experienced teachers have agreed to provide this assessment. They have not had any appreciable contact with this student previously. We are asking each to reach his recommendations without discussing this with other members of the examining panel.

The following paragraphs summarize the purpose of this evaluation process, the recommendations that are possible in

this situation, the methods for the evaluation of this student, and some of the necessary background information.

Purpose: To establish a group to examine a student and then select from among three possible recommendations.

Recommendations: Each examiner is asked to reach one of three possible recommendations: that the student is performing satisfactorily and should continue on the curriculum schedule which calls for graduation at the end of May 1973; that the student is not performing satisfactorily and should remain on probation until May 1973 when her performance is to be assessed again at which time a decision will be made about how much more time she needs in school in order to become a safe physician or that she be dropped from school if her performance has not improved sufficiently; or thirdly, that the student demonstrates substantial deficiencies in spite of attempts to help the student overcome these and so should be dropped from the Medical School.

Method: Observe the student going through those steps and procedures appropriate to the student's development and evaluate the extent of the student's mastery of relevant concepts, knowledge, skills, and competence to function as a physician.

This calls for such steps as observing the student as the student evaluates a patient by taking the history, carrying out the physical examination, collecting and evaluating other data, formulating a problem list, and developing a management plan. This calls also for discussion and probing to determine the extent of the student's information as well as other aspects of clinical competence.

In this instance, the student is in Year 6 and would be expected to graduate at the end of May of 1973 if there were no questions about her total performance. Several topics have been

of concern since July of 1972. These are the following: relationships with other individuals; clinical performance; personal appearance and grooming; and the acceptance of suggestions and constructive criticism.

The School is asking the clinicians to conduct a fair, careful, and searching assessment of this student's present competence by spending several hours with the student as she examines one or more patients in your presence and as you and she discuss the cause, manifestations, pathophysiology, course, and management of the problems of the patient or patients. The pathologists may use clinical protocols, slides, and other laboratory items to lead into similar discussions. We need a careful written statement of your recommendations and the reasons for these recommendations.

We are asking the student to make contact with you and arrange a satisfactory time for this evaluation with you. Your office or hospital practice may provide the setting and the patients to be examined. If you prefer, the setting may be at one of our affiliated hospitals.

I am asking the student to be in touch with you shortly. We need to be impartial and meet heavy responsibilities to the student, the membership of this School, and the community which we serve. We appreciate your willingness to help us in the very important matter of assessing this student's development and performance.

s/ R. K. Noback
Richardson K. Noback, M.D.
Dean

RKN:j

DEFENDANT'S EXHIBIT 32

The Children's Mercy Hospital
In affiliation with the University of Missouri School of Medicine
24th at Gillham Road Kansas City, Missouri 64108
471-0626 Area Code 816

March 22, 1972

re: Charlotte Horowitz

Dr. William Sirridge
University of Missouri
School of Medicine
2220 Holmes Street
Kansas City, Missouri 64108

Dear Bill:

Miss Horowitz has not performed in Pediatrics as well as she might. I have counseled with her at this stage (— halfway) in her Pediatric Rotation, suggesting that she might try to remedy her position. Specifically:

1) Her rapport with patients and her expertise in coming to the fundamentals of the clinical problem are below those of her peer group. In particular despite her interest in clinical psychiatry, she does not yet distinguish differences and or similarities between emotional health and organic disease.

2) Her fund of information is average: she does not excel for an advanced student.

3) She is erratic in her attendence in the Clinic.

4) Several physicians are disturbed by her lack of personal hygiene.

I am transmitting these remarks to you for your information.

Sincerely,

/s/ Herb
Herbert A. Wenner, M.D.

haw:gk

cc: Dr. Smull

DEFENDANT'S EXHIBIT 40

D-40

Please mail this card to the Docent, University of Missouri-Kansas City School of Medicine, Kansas City, Missouri, with your personal assessment of the student and his accomplishment while under your guidance. Be specific. What do you believe the student has been exposed to and what did he learn?

Student Name Charlotte Horowitz Rotation Surgery

Year in Medical School VI Date [illegible]

Evaluator [illegible] Time Associated with

	UNSATISFACTORY			SATISFACTORY			SUPERIOR		
	1	2	3	4	5	6	7	8	9
Attitude				✓					
Peer Relations				✓					
Reliability				✓					
Clinical Competence: —Medical Information							✓		
—Concepts					✓				
—Skills				✓					
Patient Rapport				✓					
Ingenuity			✓						
Conscientiousness					✓				
Integrity					✓				

Suggestions and Comments: (See my letter to Dr. Smull)

Signature [illegible]

Space Reserved for Council on Evaluation

DEFENDANT'S EXHIBIT 41

Menorah Medical Center
4949 Rockhill Road Kansas City, Missouri 64110
(816) 276-8000

May 4, 1973

Dr. Ned Small
Children's Mercy Hospital
24th and Cherry
Kansas City, Missouri 64108

Dear Doctor Small:

This letter is in follow-up to the discussion on the telephone concerning the evaluation of Charlotte Horowitz. Charlotte, as you know, was at Menorah Medical Center for the months of March and April on a rotation in surgery. I think that our total experience here was satisfactory but just barely so. Part of the time she was not here because of some obligations at the medical school but while she was here she did not display very much ingenuity in seeking out educational opportunities at the hospital. She attended conferences regularly as well as assigned rounds but was extremely passive at all times. Her patient work ups were good but she did the bare minimum and she spent most of her time in the library rather than on patient floors, operating room, or clinics. I think that with more effort she could have derived more benefits from the rotation, but I think that she did satisfy the minimal requirements that we have set up here.

I hope that this information is of some value to you. If there are any specific questions left unanswered please contact me again.

Sincerely,

Norman B. Ackerman, M.D., Ph.D.
Chairman, Department of Surgery
Menorah Medical Center
Professor of Surgery, University of
Missouri—Kansas City

NBA/lww

DEFENDANT'S EXHIBIT 43

Please mail this card to the Dean of University of Missouri-Kansas City School of Medicine, Kansas City, Missouri, with your personal evaluation of the student with whom you have worked while under your guidance. Be specific. What do you believe the student hoped to accomplish and what did he learn? D-43

Student Name Charlotte Horowitz Rotation/Elective

Year in Medical School 6 Date 5-15-73

Evaluator Ramon Lopez M.D. Time Associated

	Unsatisfactory								Satisfactory
	1	2	3	4	5	6	7	8	9
Attitude			X						
Peer Relations			X						
Reliability			X						
Clinical Competence: —Medical Information			X						
—Concepts			X						
—Skills		X							
Patient Rapport				X					
Ingenuity		X							
Conscientiousness			X						
Integrity				X					

Suggestions and Comments: has no interests in medicine + hardly [illegible] psychiatry.

Signature: [signature]

Space Reserved for Council on Evaluation

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DEFENDANT'S EXHIBIT 50

University of Missouri-Kansas City
School of Medicine
2220 Holmes Street
Council on Evaluation Kansas City, Missouri 64108

MINUTES
COUNCIL ON EVALUATION

December 26, 1972

Executive Session Section
Personal and Confidential

(For distribution to the Dean of the School of Medicine **only**)

MEMBERS PRESENT: Dr. Ned Smull, Chairman
Dr. Michael Burgess
Dr. Jerry Burton
Dr. Glenn Eberhart
Dr. William Mayberry
Dr. Robert Mosser
Mr. Larry Rues
Dr. Walter Stelmach

MEMBERS ABSENT: Dr. Paul Koontz
Dr. James Richards

STAFF PRESENT: Mrs. Louise Gammon
Dr. Richardson Noback

Discussion of Status of Year 6 Student—Miss Charlotte Horowitz

Dr. Smull opened the discussion by reminding Council members of their goal to graduate professionals, and by stating the ob-

jective of this student evaluation: i.e., the Council must determine whether the student should remain on probation, should be removed from probation with expectation of graduation in 1973, or be offered other possible alternatives.

Data as discussed at the preceding meeting was reviewed and copies made available to two members who were absent at that time. After thorough discussion, members of the Council concurred in the opinion that they found no substantial evidence of improvement either in clinical performance or in areas of interpersonal relations which would warrent removing the student from probation. It was noted that although the Docent states that the student has improved considerably, his recommendation is based on the student's future plans, and evidence from other sources does not corroborate this statement. This issue is not one of academic achievement, but of performance, relationship to people and ability to communicate.

Dr. Smull read to the Council a letter from Dr. Paul G. Koontz, expressing his concern "about the credibility (in light of our raison d'entre, 'the safe physician') of the Council" in the eyes of faculty, students, and the community at large if we choose to ignore the serious inadequacies of this student in clinical performance that have been recorded. Dr. Koontz further stated that in his opinion, an innovative medical school program with yet untested product seems to weigh against the promotion and early graduation of an individual about whom there have been serious questions raised.

Council members expressed agreement with the concerns voiced by Dr. Koontz and after further discussion, voted unanimously to make the following recommendations to the Dean of the School of Medicine:

> Upon reviewing the student's performance, the Council on Evaluation recommends that this student be continued on probation and not be considered as a candidate for the M.D. degree in June, 1973. The student may choose to remain at U.M.K.C. School of Medicine until June 1, 1973, but may not continue beyond that date unless there is radical improvement in the following areas: clinical competance, peer and patient relations, personal hygiene, and ability to accept criticism.

The Council then considered additional agenda items in regular session.

Recorded by,

/s/ Louise Gammon
Mrs. Louise C. Gammon

Approved by,

/s/ Ned W. Smull, M.D.
Ned W. Smull, M.D.
Chairman

DEFENDANT'S EXHIBIT 51

University of Missouri-Kansas City
School of Medicine
2220 Holmes Street
Council on Evaluation Kansas City, Missouri 64108

MINUTES
COUNCIL ON EVALUATION

December 26, 1972

MEMBERS PRESENT: Dr. Ned Smull, Chairman
Dr. Michael Burgess
Dr. Jerry Burton
Dr. Glenn Eberhart
Dr. William Mayberry
Dr. Robert Mosser
Mr. Larry Rues
Dr. Walter Stelmach

MEMBERS ABSENT: Dr. Paul Koontz
Dr. James Richards

STAFF PRESENT: Mrs. Louise Gammon
Dr. Richardson Noback

Approval of Minutes

The suggestion was made by Dr. Mosser that minutes be signed by the Chairman of the Council indicating his approval. The Council agreed to this policy and the minutes of the December 21 meeting were approved with this addition.

Discussion of Year 6 Student

The Council went into Executive Session to discuss in full detail matters of student evaluation.

Upon reviewing the student's performance, the Council on Evaluation voted unanimously to approve the following recommendations to the Dean of the School of Medicine:

> The Council on Evaluation recommends that this student be continued on probation and not be considered as a candidate for the M.D. degree in June, 1973. The student may choose to remain at U.M.K.C. School of Medicine until June 1, 1973, but may not continue beyond that date unless there is radical improvement in the following areas: Clinical competance, peer and patient relations, personal hygiene, and ability to accept criticism.

Consideration of Quarterly Profile for Year 5 Student

Dr. Smull announced that Mr. Frank Brown, a former student who is now a student of the University of Washington, St. Louis, has agreed to take a Quarterly Profile Examination to fulfill his commitment to the Dean, his Docent, and the U.M.K.C. School of Medicine. The Council selected the August examination and requested Mrs. Gammon to make the necessary arrangements for administering and scoring.

Next Meeting

The next meeting of the Council on Evaluation will be held on Tuesday, January 2, 1973, at 4:30 p.m., Room 101, Children's Mercy Hospital. At this time the Council will consider the remaining items on the agenda:

1) Discussion of additional evaluating procedures

2) Discussion of November Quarterly Profile Examination

Recorded by,

/s/ Louise Gammon
Mrs. Louise C. Gammon

Approved by,

/s/ Ned W. Smull, M.D.
Ned W. Smull, M.D.

Chairman

DEFENDANT'S EXHIBIT 52

UNIVERSITY OF MISSOURI—KANSAS CITY
School of Medicine
2220 Holmes Street
Kansas City, Missouri 64108

COUNCIL ON EVALUATION

May 1, 1973

MINUTES

(For Distribution to the Dean of the Medical School Only)

Discussion of Year 6 Student

Discussion was opened by Dean Noback, who at Dr. Smull's request, reviewed for new Council members past Council recommendations on year 6 student, Charlotte Horowitz.

In the summer of 1972, following a thorough review of her clinical performance, Docent evaluations, National Boards, and Quarterly Profile scores, Miss Horowitz was placed on probation. The student's status was again reviewed in December, 1972. After thorough and lengthy discussion the Council on Evaluation made the following recommendation.

Upon reviewing the student's performance, the Council on Evaluation recommends that this student be continued on probation and not be considered as a candidate for the M.D. degree in June, 1973. The student may choose to remain at UMKC School of Medicine until June 1, 1973, but may not continue beyond that date unless there is a radical improvement in the following areas: clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism. The student appealed this decision.

At the present time it is important for the Council to deal with new data on this student to consider the questions of possible graduation in May 1973 and or status, and whether Miss Horowitz should continue as a student in the UMKC School of Medicine following June 1973. Resulting Council recommendations will be sent to the Coordinating Committee.

It was again emphasized that the goal of the School is to graduate professionals and safe physicians.

Dr. Noback then presented to the Council the new date in the form of letters of evaluation from six physicians who have recently tested and evaluated Miss Horowitz in clinical settings. (See Attachments) Dean Noback explained that the student was responsible for contacting and arranging her own schedule for these evaluations and therefore must bear the brunt of the responsibility for the fact that a seventh letter of evaluation has not been received by his office to date.

Council members discussed at length the above data together with Miss Horowitz's Jan/Feb OB/Gyn rotation evaluation report.

Of the six examining physicians, who have given their best judgment of Miss Horowitz's performance, five concurred with the Council's previous decision, that Miss Horowitz NOT graduate in 1973.

The Council on Evaluation unanimously recommended that Miss Horowitz's appeal be denied as previously stated, i.e. that she not be allowed to graduate in May, 1973.

All members were requested to return to Dean Noback for his confidential files copies of the data discussed. Discussion of Miss Horowitz's future status was deferred until the next meeting at which time the remaining letter of evaluation will be presented. The date for this meeting was set as May 14, 1973.

APPROVED BY:

/s/ Ned W. Smull, M.D.

RECORDED BY:

/s/ Louise C. Gammon

———————

DEFENDANT'S EXHIBIT 53

University of Missouri-Kansas City
School of Medicine
Council on Evaluation 2220 Holmes Street
Kansas City, Missouri 64108

MINUTES
COUNCIL ON EVALUATION
EXECUTIVE SESSION

MAY 14, 1973

(For distribution to the Dean of the Medical School only.)

The Council went into executive session, following comments by Dr. William Sirridge. Dr. Smull re-stated the Council's previous recommendations (see executive session minutes for December 26, 1972 and May 1, 1973). A report was made on the student's low-satisfactory performance on Surgery rotation. Dr. Noback stated that a staff evaluation of Miss Horowitz's performance on OB/Gyn has been promised by Dr. Miller.

The seventh and final report from examining physicians was read and found to be in agreement with five of the six reports considered previously (i.e. inadequate clinical performance).

Following thorough discussion the Council unanimously agreed on the informal recommendation, baring receipt of any reports that Miss Horowitz has improved radically, that the student not be allowed to re-enroll in the UMKC School of Medicine.

It was emphasized that the above recommendation will not become official until such time as the Council receives written

copies of the Surgery and OB/Gyn evaluations from faculty of the School of Medicine.

The Council then discussed other agenda items in regular session.

Approved by:

s/ Ned W. Small M.D. (L.J.)
Ned W. Smull
Chairman

Recorded by:

/s/ Louise C. Gammon
Louise C. Gammon
Administrative Aide

DEFENDANT'S EXHIBIT 54

University of Missouri-Kansas City
School of Medicine

Council on Evaluation

2220 Holmes Street
Kansas City, Missouri 64108

COUNCIL ON EVALUATION
EXECUTIVE SESSION MINUTES

May 28, 1973

(For distribution to the Dean of the Medical School **only**)

Discussion was continued of the status of Yr. VI student Miss Charlotte Horowitz.

Dr. Smull reviewed previous Council action (see Executive Session Minutes for Dec. 26, 1972, May 1, 1973, May 14, 1973, May 21, 1973).

Dr. Noback presented reports on the student's emergency rotation at Menorah Hospital following the regular surgery rotation. The student was evaluated as having very little ability to gather facts from patients, showing a general lack of interest, having a good store of knowledge but unable to apply and make use of same, having poor clinical skills, needing encouragement to tend to patients, and showing little interest in medicine and surgery. The instructor stated that he would not want this student as a house staff officer both because she seemed more in the way than helpful and because of lack of cleanliness and personal hygiene. He expressed concern about student/patient report. He stated that the emergency room had about 20 patients per day which should give a student ample time; however, after observing her performance he decided not to transfer her to the night shift (30 patient load) as originally planned.

Following this report, Dr. Smull stated, since the Council's decision not to allow Miss Horowitz to graduate this spring has been sustained by the Coordinating Committee, the Council now has the option of recommending whether the student should be allowed to re-enroll or should be dropped from the school. Dr. Smull then reviewed the informal recommendation made by the Council May 14, 1973 (i.e. that Miss Horowitz not be allowed to re-enroll in the UMKC School of Medicine barring receipt of reports that she has improved radically).

Council members concurred in the opinion that the student has been given a fair and deliberate evaluation. This has taken place throughout a full year and has involved upwards of 40 people and special examinations. Ground rules were spelled out clearly in January and have not been met.

The Council unanimously recommended that Miss Horowitz be dropped from the UMKC School of Medicine.

(Dr. Smull to dictate **Why**) (Handwritten)

The Council then considered other agenda items in regular session.

Approved by Recorded by

. . . .

judging qualifications of students. It would be beneficial in judging the School's entire system of education. (Dr. Noback outlined the report he received from the seventh examiner who recommended that Miss Horowitz remain in school for at least one additional year.)

The Committee voted to sustain the Council's recommendation that Miss Horowitz not be allowed to graduate. The vote was as follows: 5—yes; 1—abstention.

The Committee discussed pertinent information at length. The overwhelming judgment from examiners is that the student does not perform at the level expected of a medical student who is about to graduate.

DEFENDANT'S EXHIBIT 56

UNIVERSITY OF MISSOURI—KANSAS CITY
School of Medicine
Kansas City, Missouri 64108 Telephone
(816) 474-4100

MINUTES
EXECUTIVE SESSION
COORDINATING COMMITTEE

June 4, 1973

MEMBERS PRESENT:

Dr. Richardson K. Noback
Dr. David Baeder
Dr. Kenneth D. Baker
Dr. Ralph Hall
Dr. Andrew McCanse
Dr. William Mayberry
Dr. Robert Mosser
Dr. Marjorie Sirridge
Dr. Ned Smull
Dr. Charles Wilkinson

MEMBERS ABSENT:

Dr. Edward Twin

OTHERS PRESENT:

Miss Patricia Gosney
Dr. Raymond Mecca
Dr. Henry Mitchell

The Committee considered the Council on Evaluation minutes of May 21 and May 28, 1973. Each of the recommendations

listed below was discussed in detail before a vote was taken concerning the progress of individual students.

• • • • • • •

Year VI Student

Dr. Smull reviewed the historical sequence of events surrounding the probation of Miss Charlotte M. Horowitz, Year 6 student, and the unanimous recommendation from the Council that she be dropped from the School of Medicine. In July, 1972, Miss Horowitz, a Year VI student was placed on probation. In December, 1973, her records were again reviewed with the recommendation that she not be allowed to graduate in May, 1973, and not be allowed to remain in School after that period unless radical improvement was made in the following areas: clinical competence, peer and patient relations, personal hygiene and ability to accept criticism. This recommendation was accepted by the Coordinating Committee and subsequently appealed by Miss Horowitz. Consistent with the Academic Plan, the Dean and Dr. Smull established the mechanism for this appeal—a series of seven examinations by physicians representing the major curriculum blocks on which she had served to date. This appeal was denied after receiving the clinician's recommendations—five of the seven noted that she not be graduated in May of 1973; one of the seven indicated she should be graduated as the system is at fault rather than the student.

The recommendation being acted upon by the Committee concerns Miss Horowitz' future status in School. As Dr. Smull reported the Council's recommendation, he reviewed the rotational evaluations from her instructors over the last five months. None of the instructors could find any radical improvement in any of the areas cited in December, 1972, by the Council. These evaluations formed the data base for the Council's decision.

Opening the discussion among Committee members, Dr. Sirridge indicated it is important to note that Miss Horowitz has successfully taken Part II of the National Board Examination—"indicating that she does possess the clinical information which someone says is important." Dr. Smull noted that no one has ever questioned her ability to assimilate information—rather her ability to utilize the information in a clinical fashion. He added that her evaluations since entering Medical School have included "Low Satisfactory" on most rotations, an "Unsatisfactory" on Pediatrics, and a "Highly Satisfactory" on the Docent Unit. Her performance has been of extreme concern to all instructors excepting her Docent.

Dr. Sirridge suggested that all faculty, staff, and examiners have been prejudiced in dealing with Miss Horowitz from the beginning date of her medical education. Dr. Baeder agreed and added that the School may be guilty of negligence in that she should not have been promoted to Year 6 in August of 1972.

Dr. Noback answered by expressing his belief that all can be secure in knowing that everyone dealing with Miss Horowitz, beginning in August, 1972, has tried very hard to be clear and constructive in discussing her future. When she was first placed on probation at this time, the Dean, Dr. Smull and Dr. William T. Sirridge, Docent, met with her to discuss the Council's concerns and areas of needed improvement. Again in December of 1972 when the Council reevaluated the probationary status and recommended its continuance and no graduation, Miss Horowitz again met with her Docent, Dr. Smull, and Dr. Noback who clearly outlined the components of the School's actions. Other avenues of educational endeavors were discussed with her; professional counseling was made available to her. Summarizing the reports from the rotational instructors, Dr. Noback reminded members of Dr. Bunch's verbal report to Committee members on Miss Horowitz' OB=Gyn rotation. The

Dean has received a verbal report from the physician in charge of the Menorah Medical Center Emergency Room where the student has completed a month assignment. The physician concluded: "How did she progress so far? She is not at all ready to graduate. She would not be acceptable as a house officer."

It is evident from these reports that Miss Horowitz did not perform well over the last five months. She has not improved in the enumerated areas. She is not able to accept criticism, a major stumbling block for a person in the profession of medicine.

Dr. Sirridge questioned the likelihood of additional time enabling Miss Horowitz to improve in the stated areas. Speaking on behalf of the Council, Dr. Smull stated that her goals seem to be in conflict with the concepts and philosophy enunciated in the Academic Plan. Based on the School's goal of graduating "a safe physician," Miss Horowitz had to be judged on her past performance in School. Dr. Noback added that she has had one year of formal concern and effort by the School; during this time there has been no documentation of any appreciable improvement in performance. A significant series of steps have been taken via the Council on Evaluation and the Office of the Dean resulting in long and deliberate discussion as to the possibilities for her improvement if allowed to continue in School.

Dr. Sirridge voiced her belief that Miss Horowitz has been a victim of our own system, whereby we have rushed nine students through the curriculum, yet have not evaluated them in the same manner as has been done for Miss Horowitz.

As a member of the Council on Evaluation, Dr. Mayberry noted that his decision in this matter was made easier by reading the comments from instructors who identified the same concerns which have been articulated to Miss Horowitz over the last year. As a point of information, Dr. Noback reported Miss Horowitz' statement of her intention to sue the School should she not be allowed to continue. While the Committee's action on this recommendation should not be altered due to this possibility, the Dean reported on his meeting with the University's General Counsel in Columbia whose reaction is that the School has been unusually careful and deliberate in evaluating this student. The key items in such a suit, according to the General Counsel, include: 1) are the procedures for the evaluation process in place?; and 2) are the faculty acting deliberately, carefully, and reasonably?

Dr. Wilkinson voiced his opinion that while the precise procedures are only recently in place, the deliberations have been long and careful. He noted that her evaluators at the Menninger Clinic (where she spent three months on a psychiatry elective—her specialty) only gave her a bare passing grade and reported that her range of knowledge is not dynamic; it primarily consists of memorized facts. They also documented the comments from the psychiatrist whom Miss Horowitz has been seeing for some time: "She is very rigid and well-defended; any changes in her personality structure are unlikely to occur." Dr. Smull remarked that when alternative career paths are discussed with her the following response is given:
Dr. Smull: How do you feel about securing a Ph.D. rather than an M.D.?

Miss Horowitz: But I need the M.D.

Dr. Smull: Do you want to be a practicing clinician?

Miss Horowitz: No, I don't want to be a team player. I want to use drugs to experiment on people.

Turning the Chair over to Dr. Mayberry, Dr. Noback, as a member, voiced the following opinion. As the administrative staff has met with Miss Horowitz to discuss, in gently-phrased terms, the criticisms, her response is consistent—a quick and vicious

attack on any critic—whether it be the School, Menninger Clinic, or any individual.

Again, Dr. Sirridge suggested that other graduation seniors were not evaluated in the same manner; she stated that the types of stresses she was exposed to during the appeal examinations were terrible. "Psychiologically, we have aggravated her condition, even though we have tried to help her in some ways."

Dr. Noback noted that he is convinced that none of the examiners were trying to be difficult in their dealings with her. Such criticisms as the following can hardly be termed discriminatory: "She forgot her tools needed for the examination," "her histories didn't measure up in content, style or performance;" "she has less ability to put things together than I would expect from a student at a much younger level." Dr. Wilkinson added with a character structure such as Miss Horowitz reflecting in such rigidity, stress only serves to intensify her structure. When left alone, she reacts in an academic fashion: when stressed (in a group setting) she is unable to perform.

At the conclusion of this discussion (over one hour in length) a vote was taken on acceptance of the Council on Evaluation's recommendation that Miss Horowitz be dropped from the School of Medicine. The vote was as follows:

Yes	—5
No	—0
Abstain	—3

Members abstaining from the vote stated they chose not to vote against the Council's recommendation as they have demonstrated exemplary efforts in dealing with this student; they do feel, however, that "she needs to be given another chance."

It was pointed out that in Miss Horowitz' case, as with all students, should sufficient improvement take place, she could be considered for readmission to the School of Medicine.

Dr. Noback closed the meeting by announcing that any inquiries from Miss Horowitz' attorneys should be directed to Mr. Jackson Wright, General Counsel, University of Missouri at Columbia and to the Dean.

PLAINTIFFS' EXHIBIT 32

University of Missouri-Kansas City
School of Medicine

2220 Holmes Street
Kansas City, Missouri 64108

Council of Docents
Robert S. Mosser, M.D.
Docent and Chairman
Louise E. Arnold, Ph.D.
Office of Medical Education
Richardson K. Noback, M.D.
Dean
Marjorie S. Sirridge, M.D.
Docent
William T. Sirridge, M.D.
Docent

June 9, 1972

MEMORANDUM

TO: Dr. Ned W. Smull
Chairman, Council on Evaluation

SUBJECT: Advanced student class designation for
Charlotte M. Horowitz

This student's curriculum vitae is enclosed. Her past record is the best in the school; her examination scores are at the very top

of the school. She has functioned in my clinic and I, as should be expected, have had more contact with this student than has anyone else in the school. She has worked in the room opposite mine on the clinic rotation, so I feel my assessment of her clinical performance is well founded; she has functioned at a high level and has had no problems with a patient at any time, her overall performance on the Docent Unit at General Hospital has been entirely satisfactory.

However, I think it is essential to acknowledge certain drawbacks. Charlotte, by good or bad fortune, is a New York Jewess and perhaps her hypercriticality and tendency to complain can be attributed to this heritage. Her personal habits may leave something to be desired by most people. She also has the added burden of being a female with an IQ and accomplishment thus far in her career superior to most males who are her superiors by position. I would believe that one should consider her status and classification in terms of the years it would take to change those things which are not exactly desirable to most of her superiors. It must be kept in mind that this girl has her plans absolutely set on what she will do. She will go back to N.I.H. to spend a two year residency in psychiatry, she will then spend another year away from N.I.H., then to return for her work in psychotherapeutics and psychiatry. She has spent a previous five years at the National Institute of Health and was entirely accepted; she will, in essence, be "going home."

Knowing that this girl is definitely going into psychiatry, is definitely going to take a five year residency in psychiatry and that she has an absolutely impeccable academic record of test scores and grades, I do recommend this different student in a different school to be classed as Year V at present and to be advanced to Year VI in September. I highly recommend this student for Year VI without reservation from an academic standpoint, with the added personal commitment to guide her through a different

curriculum, where she has clearly performed in a better than satisfactory manner.

Sincerely,

/s/ William T. Sirridge

WTS:cec

enc.

U. M. M. C. School of Medicine Student Evaluation Survey

Student's Name Horowitz, Christopher M. Evaluator William F. Sheridan, M.D.
Senior Docent, Professor of Medicine

Student's Year in Medical School Advanced Standing Date of Evaluation

Instructions: For each scale below, carefully consider each descriptive statement and check the blank opposite the statement that best describes the student you are evaluating compared to other students at the same level. You may rightly think that no one of the statements is an exact description of the student, but make the best choice you can. In choosing the best statement, consider the student's overall performance; don't base your evaluation on one or two isolated incidents. Please be as accurate as you can.

CLINICAL PERFORMANCE

___ His (or her) clinical performance is the minimum that should be expected of a student at his level.

___ His clinical performance barely meets minimum standards for a student at his level. Errors are frequent and usually serious.

___ As a rule his clinical performance is good, but ought to make more progress than the average student at his level to be entirely satisfactory.

___ His clinical performance is of outstanding quality for a student at his level. He makes occasional errors, but these are not serious. Technically, his performance is good.

___ His clinical performance is definitely average in quality for a student at his level. He usually can be counted on to be both accurate and thorough.

___ His clinical performance is very good in accuracy and thoroughness in all respects. Commendable.

___ His clinical performance is outstanding in accuracy, thoroughness and skill in all respects.

SKILL IN RELATING TO PEOPLE

___ His lack of skill in relating to people is such that he cannot work effectively either with individuals or groups.

___ Although he may have some friends among his colleagues, few like him well. He works better alone and is not very effective in relating to individuals.

___ He is liked by many of his colleagues, and can work effectively with some individuals and groups.

✓ He is about average in his effectiveness in working with individuals and groups. He is liked by most of those in close contact with him and disliked by almost no one.

___ Above average in his skill in relating to people. Makes a good impression and expresses himself well. He is often successful in getting others to work well together.

___ His considerable skill in handling people and makes friends easily. Is nearly always successful in getting cooperation among members of a group.

___ His skill in relating to individuals in handling difficult interpersonal situations, and getting others to work together effectively is exceptional. He is well liked by everyone.

INITIATIVE; CAPACITY FOR INDEPENDENT ACTION

___ Must always be told or shown just what to do. Even when given detailed instructions, he sometimes fails to carry them out.

___ When given explicit instructions he usually carries them out, but unanticipated difficulties make additional instructions necessary. Needs considerable supervision.

___ Can work fairly independently on a day to day basis, but quite a bit of supervision is necessary. Not a self-starter.

___ Once given general instructions, and started on a task, he proceeds with only moderate supervision. Usually takes action to overcome minor difficulties and seeks help when appropriate.

X Frequently sees what needs to be done and goes ahead with little supervision. He is resourceful in overcoming most difficulties encountered.

___ With very little supervision he can initiate, plan, and carry out his own work. Nearly always sees what needs to be done and does it.

___ He is fully capable of initiating, planning and carrying out his work without detailed instruction and/or supervision.

INGENUITY AND FLEXIBILITY

___ Never has an idea of his own and never thinks of modifying an accepted method even if it doesn't fit the situation.

___ Usually thinks only of routine approaches, doesn't have much imagination, and seldom suggests new ideas.

___ Occasionally suggests a new idea or approach but it is usually of minor significance. Requires considerable time or effort to adjust to changes in his work situation.

___ About average in ingenuity and flexibility. His ideas often contain some germ of novelty. Has sometimes devised a new method or approach.

___ Suggests more new ideas than does the typical student at his level, and his suggestions are usually good ones. Adapts reasonably well to changes in the demands of the task or in the work situation.

✓ Has a lot of new ideas. Often calls attention to uses of a technique beyond its original purpose. Adapts quickly and easily to changes in the work situation.

___ Has an unusual capacity for developing new and good alternatives to problems and for changing to changing work situation. One of our most ingenious students.

ATTITUDE TOWARD WORK

___ He has little, if any, genuine interest in his work. Gives appearance of "go through the motions" until quitting time or for the end of the day.

___ His interest in his work is only slight. Is easily distracted by minor irritations. Frequently has to be necessary to keep him working.

___ His some interest in his work but is rarely enthusiastic, and sometimes bored. Tends to loaf and avoid assignments or responsibilities.

___ Is moderately interested in his work but does extra work only when requested and not because of personal interest. Willingly accepts assignments and responsibilities but does not seek them.

X He likes his work, and does occasionally does extra work because of his personal interest in a problem.

___ His work is important to him, he gets definite satisfaction out of it when it well. Frequently does extra work because of interest in a problem.

___ His work is thoughtful, imaginative and effective. He is very much in control.

BEST COPY AVAILABLE

[illegible] has been designed to assist in the evaluation of medical students. The questions in Sections I, II, and III should be responded to by the Faculty member who has had personal contact and observation of the student's performance. You are to respond only to those items upon which you have sufficient information. Section III provides an opportunity for more general comments. Please make any comments you feel are relevant to create a picture of the student and his clinical performance.

Student's Name Borowitz, Charlotte H. No. of Contacts in Previous Mos. _____

Student's Year in Medical School Advanced Standing

Evaluator William T. Sirridge, M.D. Today's Date _____

I. COMMUNICATION AND CLINICAL MANNER

a) Student's reaction to the situation
nervous 1 2 3 (4) 5 confident

b) Self introduction of student to patient
nervous 1 2 3 (4) 5 confident

c) Collection of data about patient's problem
incomplete 1 2 3 (4) 5 thorough

d) Comments of the student during his discussion with the patient
inappropriate 1 2 3 (4) 5 appropriate

e) Impression student creates in the patient
unfavorable 1 2 3 (4) 5 favorable

f) Ability to obtain patient's cooperation
absent 1 2 3 4 (5) competent

g) Ability of the student to establish rapport with the patient
absent 1 2 3 4 (5) competent

II. ABILITY TO APPLY KNOWLEDGE

A. Data Collection

a) Student's inquiry into the patient's history
incomplete 1 2 3 (4) 5 complete

b) Student's command of physical examination techniques
inadequate 1 2 3 (4) 5 competent

c) Student's use of appropriate instruments
inadequate 1 2 3 4 (5) competent

d) Verbal instructions given to the patient by the student during the examination
incomplete 1 2 3 4 (5) complete

e) Completeness of the physical examination
incomplete 1 2 3 (4) 5 thorough

f) Referral of the patient by the student to lab, X-ray, other appropriate facilities or persons
inappropriate 1 2 3 4 (5) appropriate

B. Assessment of Problems and Management Planning

a) Student's interpretation of the patient's verbal statement
inaccurate 1 2 3 4 (5) accurate

b) Student awareness of pertinent physical findings
unaware 1 2 3 4 (5) aware

c) Student's assessment of findings
inaccurate 1 2 3 4 (5) accurate

d) Student communication to the patient regarding the patient's problems
inappropriate 1 2 3 4 (5) appropriate

e) Appropriate medication or referral recommendations given to the patient
inappropriate 1 2 3 4 (5) appropriate

III. COMMENTS [illegible]

PLAINTIFFS' EXHIBIT 46

University of Missouri-Kansas City
Provost for the Health Sciences
Kansas City, Missouri 64110

22 November 1972

Communications concerning students wishing to have more rapid advancement through the Medical School, students requiring decisions concerning probation, leave of absence, removal from the School, etc., are a vital function.

For my own clarification and to be certain we are all in harmony, it is my understanding that we are operating under the following rules and the published Academic Plan has established the essentials of this framework.

1. The Council on Evaluation is the essential organization within the Medical School structure, charged with making these decisions.

2. These decisions are formally recorded in their minutes and acted upon by the Coordinating Committee and again, the decisions are recorded in the mintues of the Coordinating Committee.

3. Where appropriate, both the Council on Evaluation and the Coordinating Committee can declare an executive session and excuse from the room everyone but the legitimate members of the group, and let the minutes simply record the general theme of the discussion and the ultimate decision. Specifically, the pros and cons of "evidence", the varieties of opinions expressed, etc., would not need to appear in the final minutes if the Council or Committee had declared itself in executive session.

4. When such confidential need is declared, there should be a letter that is prepared by the executive dean of the Council on Evaluation or, respectively, by the dean, and this letter should give full details and be a permanent record in the Medical School's files.

5. A student requesting an alternate path through Medical School, whether more rapid, a leave of absence, or a major departure to another campus, must do so in writing as a petition to the Council on Evaluation.

6. His strongest suit would be if he had the endorsement of his Docent. Therefore, a similar letter should go forward to the Council on Evaluation from the student's Docent. If the Docent has a contrary opinion, he should express that in writing also.

7. Primary decisions, based upon a quality of "evaluation", are the responsibilities and privilege of the Council on Evaluation. Their decision goes forward and can be endorsed or turned back by the Coordinating Committee. The Academic Plan specifically describes the mechanism for handling such a veto.

Each Docent is receiving from each medical student and from each educational experience a written evaluation form. These forms should remain in the possession of the Docent and in his files. It has always been the expectation that immediately upon receiving these forms, copies would be sent to the dean's office and to the Council on Evaluation.

It is from these evaluation forms, from the quarterly examinations, and from the Docent's recommendations that the Council on Evaluation forms its opinion.

If, in spite of the above information, the Council on Evaluation finds itself operating without adequate information, it has the responsibility of calling the stu-

dent forward for interview, and when there is real question of his ability to be a "safe physician", the Council on Evaluation may form a separate evaluation team. They will then examine the student by oral examinations and by practice performance.

8. If the student feels that the Council on Evaluation does not have sufficient or appropriate data to evaluate his ability to perform as "a safe physician", he may submit a second request with or without his Docent's endorsement asking for a practical and oral examination.

9. If a student wishes to take an extended period of study at another campus, or drop out of school, or has a lengthy illness, he or she may do this through two routes:

   a. His Docent approves the other-campus experience, gains acceptance of the Council on Curriculum and the Coordinating Committee. The student is **not** on leave of absence but is officially enrolled here and assigned elsewhere by his Docent and the Council on Curriculum.

   b. The student, with his Docent's approval or non-approval, asks the Council on Evaluation for a full Leave of Absence. If this Leave is granted, the student does not pay tuition here but is permitted to return here after the Leave, providing this is the action of the Council on Evaluation. Under appropriate circumstances the Leave of Absence status is initiated by this Council in consultation with the Docent.

PLAINTIFFS' EXHIBIT 78

University of Missouri-Kansas City
School of Medicine

Kansas City, Missouri 64108 — Telephone (816) 474-4100

MINUTES
EXECUTIVE SESSION
COORDINATING COMMITTEE

June 4, 1973

MEMBERS PRESENT: Dr. Richardson K. Noback
Dr. David Baeder
Dr. Kenneth D. Baker
Dr. Ralph Hall
Dr. Andrew McCanse
Dr. William Mayberry
Dr. Robert Mosser
Dr. Marjorie Sirridge
Dr. Ned Smull
Dr. Charles Wilkinson

MEMBERS ABSENT: Dr. Edward Twin

OTHERS PRESENT: Miss Patricia Gosney
Dr. Raymond Mecca
Dr. Henry Mitchell

The Committee considered the Council on Evaluation minutes of May 21 and May 28, 1973. Each of the recommendations listed below was discussed in detail before a vote was taken concerning the progress of individual students.

Year I and Year II Students

Recommendation No. 1: (Unanimous) That the following Year I students be promoted to Year II with concern expressed for the student's low academic performance. In each instance, a letter will be transmitted to each student and a conference between Docent, Dr. Ralph Hall, and the student will be held.

1. ~~Gail Shaffer~~—weak performance in second semester Arts & Science
2. ~~Thomas Weiss~~—low grade point average
3. ~~Eben Fowler~~—low grade point average
4. ~~Janice Bryan~~—low grade point average
5. ~~Robert Belser~~—low grade point average
6. ~~Richard Blackwell~~—too many courses have been dropped. The student needs to carry a full course load
7. ~~Sharon Lee~~—must maintain her improved grade point average

The Committee unanimously accepted the Council's recommendation.

Recommendation No. 2: (by a vote of six for, one opposed) That Year I student ~~Mr. John Litton~~ be promoted to Year II on a probationary status. His grades have

dropped in the second semester, partially due to possible psychological problems, according to his Docent.

The Committee unanimously accepted the Council's recommendation. A letter will be sent to this student, noting his probationary status and expressing concern about the student's poor attendance record and motivation.

Recommendation No. 3: (Unanimous) That Year I student ~~Almerito Tolentio~~ continue as a Year I student on probation, repeating Arts & Science courses failed during the past year and the Introduction to Medicine (under a different Docent).

The Committee unanimously accepted the Council's recommendation.

Recommendation No. 4: (Unanimous) That Year I student ~~David Carlson~~ not be promoted—pending more information from Dr. Ralph Hall who will meet with him to discuss his status. Subsequent to this report, the Council will recommend that Mr. Carlson either be dropped from the School of Medicine or required to repeat Year I.

The Committee unanimously accepted the Council's recommendation.

Recommendation No. 5: (Unanimous) That Year I students ~~Carolyn Clark~~ and ~~Clyde Hughley~~ be promoted to Year II on a probationary status. Both students have demonstrated little motivation and poor academic performance.

The Committee unanimously accepted the Council's recommendation.

Recommendation No. 6: (Unanimous) That Year I students ~~Debra Herndon~~ and ~~Robert Twin~~ be dropped from the School of Medicine due to poor academic performance. Both students have received a significant amount of personal counseling and academic advising.

Dr. Mitchell noted that Mr. Twin has indicated his intention of withdrawing from School—following the Council's decision. Dr. Baeder suggested that it may be preferable to allow a student to withdraw so as not to tarnish his academic record. There was significant discussion among Committee members concerning the timing of these actions, with most members concurring that the School's actions cannot be developed in a retrospective manner—the Council must meet its responsibilities by acting on the hard data available to them. In this instance, Mr. Twin's record showed complete non-attendance in one Arts & Science course and very spotty attendance at Introduction to Medicine, coupled with a cumulative grade point average of 1.416. Dr. Hall suggested that the labeling of this action be discussed at a later time, considering the possibility that Mr. Twin can still remain in the College of Arts & Science, if he so chooses.

By a vote of nine for, one abstaining, the Committee accepted the Council's recommendation. Dr. Smull noted that, in this and all other instances, the student can apply to the School for re-admission. All decisions of the Council's are without prejudice.

Recommendation No. 7: That the following Year II students be promoted to Year III with concern expressed for their low grade point average:

1. ~~Stanley Parman~~

2. ~~Carolee Oliver~~
3. ~~Teresa Dowdy~~
4. ~~William Atkinson~~
5. ~~Cheryl Timperly~~

The Committee unanimously accepted the Council's recommendation.

Recommendation No. 8: (Unanimous) That Year II student, ~~John Marcenik~~, continue as a Year II student on probation. He will be required to carry a full academic course load and a Special Topics medicine course (as the Council is concerned about his performance in both areas). The Council on Curriculum will be asked to design in the course in Special Topics as a modification of the present Year II Introduction to Medicine.

The Committee unanimously accepted the Council's recommendation.

Recommendation No. 9: (Unanimous) That Year II students ~~Francis Gumbel~~ and ~~Richard Tallner~~ be required to continue as Year II students with appropriate academic counseling and Special Topics in medicine.

In discussing this recommendation, members concurred that this modification in an individual student's program in entirely consistent with the goals of the School. It is envisioned that some students may complete the curriculum requirements in seven or eight years—particularly for those from educationally disadvantaged backgrounds.

The Committee unanimously accepted the Council's recommendation.

Recommendation No. 10 (Unanimous): That Year II student ~~Jerry Alstott~~ be promoted to Year III with proper academic advising and warning. This student is attending School while working 20 hours a week and is reluctant to accept financial assistance offered by the University. The Council makes this recommendation in an effort to encourage ~~Mr. Alstott~~ to be more realistic.

The Committee unanimously accepted the Council's recommendation.

Recommendation No. 11 (Unanimous): That Year II students ~~Stephen Kaguy~~ and ~~Haskell Lewis~~ be dropped from the School for poor persistent performance.

The Committee unanimously accepted the Council's recommendation.

Recommendation No. 12 (Unanimous): That Year II student ~~Thomas Nigro~~ be promoted to Year III pending completion of two courses in the spring semester. While ~~Mr. Nigro~~ is considered a weak student, he has shown improvement on the Quarterly Profile Examination and has completed his undergraduate degree requirements.

The Committee unanimously accepted the Council's recommendation.

Recommendation No. 13 (Unanimous): While the Council at its regular session recommended that Year II student ~~James Di Renna~~ be dropped from the School of Medicine due to poor academic performance, members were polled again by Dr. Smull to consider the fact that ~~Mr. Di Renna's~~ grades are significantly different than when his records were being reviewed by the Council. Consequently, the Council recommends that this student be promoted to Year III, with concern expressed for his poor academic performance and lack of motivation.

The Committee unanimously accepted the Council's recommendation.

In summary, the actions above and previous actions of the Committee during the past academic year result in four available positions at Year II and eight positions at Year III. Dr. Noback pointed out that those students who are being asked to repeat Year I or Year II will be counted as such, and therefore, will not count against the number of students who can be accepted in the projected size of each class. On behalf of the entire Committee, Dr. Noback also thanked Dr. Smull and the Council on Evaluation for their thoughtful deliberations preceding these recommendations relating to students from Year I and Year II.

Year VI Student

Dr. Smull reviewed the historical sequence of events surrounding the probation of Miss Charlotte M. Horowitz, Year 6 student, and the unanimous recommendation from the Council that she be dropped from the School of Medicine. In July, 1972,

Miss Horowitz, a Year VI student was placed on probation. In December, 1973, her records were again reviewed with the recommendation that she not be allowed to graduate in May, 1973, and not be allowed to remain in School after that period unless radical improvement was made in the following areas: clinical competence, peer and patient relations, personal hygiene and ability to accept criticism. This recommendation was accepted by the Coordinating Committee and subsequently appealed by Miss Horowitz. Consistent with the Academic Plan, the Dean and Dr. Smull established the mechanism for this appeal—a series of seven examinations by physicians representing the major curriculum blocks on which she had served to date. This appeal was denied after receiving the clinician's recommendations—five of the seven noted that she not be graduated in May of 1973; one of the seven indicated she should be graduated as the system is at fault rather than the student.

The recommendation being acted upon by the Committee concerns Miss Horowitz' future status in School. As Dr. Smull reported the Council's recommendation, he reviewed the rotational evaluations from her instructors over the last five months. None of the instructors could find any radical improvement in any of the areas cited in December, 1972, by the Council. These evaluations formed the data base for the Council's decision.

Opening the discussion among Committee members, Dr. Sirridge indicated it is important to note that Miss Horowitz has successfully taken Part II of the National Board Examination —"indicating that she does possess the clinical information which someone says is important." Dr. Smull noted that no one has ever questioned her ability to assimilate information—rather her ability to utilize the information in a clinical fashion. He added that her evaluations since entering Medical School have included "Low Satisfactory" on most rotations, an "Unsatisfactory" on Pediatrics, and a "Highly Satisfactory" on the Docent Unit. Her performance has been of extreme concern to all instructors excepting her Docent.

Dr. Sirridge suggested that all faculty, staff, and examiners have been prejudiced in dealing with Miss Horowitz from the beginning date of her medical education. Dr. Baeder agreed and added that the School may be guilty of negligence in that she should not have been promoted to Year 6 in August of 1972. Dr. Noback answered by expressing his belief that all can be secure in knowing that everyone dealing with Miss Horowitz, beginning in August, 1972, has tried very hard to be clear and constructive in discussing her future. When she was first placed on probation at this time, the Dean, Dr. Smull and Dr. William T. Sirridge, Docent, met with her to discuss the Council's concerns and areas of needed improvement. Again in December of 1972 when the Council reevaluated the probationary status and recommended its continuance and no graduation, Miss Horowitz again met with her Docent, Dr. Smull, and Dr. Noback who clearly outlined the components of the School's actions. Other avenues of educational endeavors were discussed with her; professional counseling was made available to her.

Summarizing the reports from the rotational instructors, Dr. Noback reminded members of Dr. Bunch's verbal report to Committee members on Miss Horowitz' OB-Gyn rotation. The Dean has received a verbal report from the physician in charge of the Menorah Medical Center Emergency Room where the student has completed a month assignment. The physician concluded: "How did she progress so far? She is not at all ready to graduate. She would not be acceptable as a house officer."

It is evident from these reports that Miss Horowitz did not perform well over the last five months. She has not improved in the enumerated areas. She is not able to accept criticism, a major stumbling block for a person in the profession of medicine.

Dr. Sirridge questioned the likelihood of additional time enabling Miss Horowitz to improve in the stated areas. Speaking on behalf of the Council, Dr. Smull stated that her goals seem to be

in conflict with the concepts and philosophy enunciated in the Academic Plan. Based on the School's goal of graduating "a safe physician," Miss Horowitz had to be judged on her past performance in School. Dr. Noback added that she has had one year of formal concern and effort by the School; during this time there has been no documentation of any appreciable improvement in performance. A significant series of steps have been taken via the Council on Evaluation and the Office of the Dean resulting in long and deliberate discussion as to the possibilities for her improvement if allowed to continue in School.

Dr. Sirridge voiced her belief that Miss Horowitz has been a victim of our own system, whereby we have rushed nine students through the curriculum, yet have not evaluated them in the same manner as has been done for Miss Horowitz.

As a member of the Council on Evaluation, Dr. Mayberry noted that his decision in this matter was made easier by reading the comments from instructors who identified the same concerns which have been articulated to Miss Horowitz over the last year. As a point of information, Dr. Noback reported Miss Horowitz' statement of her intention to sue the School should she not be allowed to continue. While the Committtee's action on this recommendation should not be altered due to this possibility, the Dean reported on his meeting with the University's General Counsel in Columbia whose reaction is that the School has been unusually careful and and deliberate in evaluating this student. The key items in such a suit, according to the General Counsel, include: 1) are the procedures for the evaluation process in place?; and 2) are the faculty acting deliberately, carefully, and reasonably?

Dr. Wilkinson voiced his opinion that while the precise procedures are only recently in place, the deliberations have been long and careful. He noted that her evaluators at the Menninger Clinic (where she spent three months on a psychiatry elective—

her specialty) only gave her a bare passing grade and reported that her range of knowledge is not dynamic; it primarily consists of memorized facts. They also documented the comments from the psychiatrist whom Miss Horowitz has been seeing for some time: "She is very rigid and well-defended; any changes in her personality structure are unlikely to occur." Dr. Smull remarked that when alternative career paths are discussed with her the following response is given:

Dr. Smull: How do you feel about securing a Ph.D. rather than an M.D.?

Miss Horowitz: But I need the M.D.

Dr. Smull: Do you want to be a practicing clincian?

Miss Horowitz: No, I don't want to be a team player. I want to use drugs to experiment on people.

Turning the Chair over to Dr. Mayberry, Dr. Noback, as a member, voiced the following opinion. As the administrative staff has met with Miss Horowitz to discuss, in gently-phrased terms, the criticisms, her response is consistent—a quick and vicious attack on any critic—whether it be the School, Menninger Clinic, or any individual.

Again, Dr. Sirridge suggested that other graduation seniors were not evaluated in the same manner; she stated that the types of stresses she was exposed to during the appeal examinations were terrible. "Psychologically, we have aggravated her condition, even though we have tried to help her in some ways."

Dr. Noback noted that he is convinced that none of the examiners were trying to be difficult in their dealings with her. Such criticisms as the following can hardly be termed discriminatory. "She forgot her tools needed for the examination," "her histories didn't measure up in content, style or performance," "she has less ability to put things together than I would expect from

a student at a much younger level." Dr. Wilkinson added with a character structure such as Miss Horowitz reflecting in such rigidity, stress only serves to intensify her structure. When left alone, she reacts in an academic fashion; when stressed (in a group setting) she is unable to perform.

At the conclusion of this discussion (over one hour in length) a vote was taken on acceptance of the Council on Evaluation's recommendation that Miss Horowitz be dropped from the School of Medicine. The vote was as follows:

Yes — 5

No — 0

Abstain — 3

Members abstaining from the vote stated they chose not to vote against the Council's recommendation as they have demonstrated exemplary efforts in dealing with this student; they do feel, however, that "she needs to be given another chance."

It was pointed out that in Miss Horowitz' case, as with all students, should sufficient improvement take place, she could be considered for readmission to the School of Medicine.

Dr. Noback closed the meeting by announcing that ary inquiries from Miss Horowitz' attorneys should be directed to Mr. Jackson Wright, General Counsel, University of Missouri at Columbia and to the Dean.

Supreme Court, U. S.
FILED
JAN 4 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-695

BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI; MEMBERS OF THE BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI, Individually and in Their Official Capacities, et al.,

Petitioners,

vs.

CHARLOTTE HOROWITZ,

Respondent.

BRIEF IN OPPOSITION TO THE GRANTING OF A WRIT OF CERITORARI

To the United States Court of Appeals for the Eighth Circuit

ARTHUR A. BENSON II
2525 Commerce Tower
911 Main Street
Kansas City, Missouri 64105
Attorney for Respondent

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

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In the Supreme Court of the United States

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BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI; MEMBERS OF THE BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI, Individually and in Their Official Capacities, et al.,
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BRIEF IN OPPOSITION TO THE GRANTING OF A WRIT OF CERITORARI
To the United States Court of Appeals for the Eighth Circuit

STATEMENT OF THE CASE

Respondent, Charlotte Horowitz, was accepted by the University of Missouri-Kansas City (U.M.K.C.) Medical School as an advanced standing student (Stipulation No. 23) for its first year of operation (Stip. Nos. 4 anc 22). Horowitz's credentials included a B.A. from Barnard College in chemistry, a M.A. in psychology from Columbia University, graduate work at Duke University and the National Institutes of Health Graduate Program at Bethesda, Maryland (Stip. No. 8) with a 3.8 on a 4.0 grade

scale in 33 semester hours (Stip. No. 10). Her Graduate Record Examination scores were as follows:

Verbal Aptitude	760	99.3 %ile
Quantitative Aptitude	770	99.4 %ile
Advanced Psychology	830	99.9 %ile
Advanced Chemistry	840	99.9 %ile (Stip. No. 9),

and scores on the Medical College Admissions Test of:

Verbal Aptitude	655
Quantitative Aptitude	645
General Information	735
Science	735

with 735 being in 99 %ile (Stip. No. 12). Clearly, Horowitz has an outstanding academic record. These academic achievements were supported by recommendations from people who were familiar and impressed with her work (Stip. Nos. 18 and 19). Upon entering U.M.K.C., Horowitz took the National Board Mini-Test scoring first in the school in basic science and second in clinical studies (Stip. No. 27) and the Minnesota Multiphasic Personality Inventory Psychological test. This test measures, among other factors, mental maturity and emotional stability. Horowitz tested within the normal range for all clinical test categories (Stip. No. 28).

Studies at the medical school were divided into rotations, the docent unit being appellant's first rotation from September, 1971 through December, 1971 (Stip. No. 29). The docent rotation at U.M.K.C. Medical School is the primary educational block of the curriculum where each student has frequent and close contact, within a small group of students, with a faculty member, the docent. The docent maintains this close relationship with the same small group of students throughout their years of instruction. Fifteen

hours of credit were recorded on appellant's transcript for her initial docent rotation (P.Ex. 83). Students did not receive letter grades or written evaluations of their performance (Tr. pp. 111, 112, 320) but rather received a credit or no credit on their transcripts (Stip. No. 82). Therefore, students determined whether they passed a rotation satisfactorily by whether they received credit on their transcripts and by what their docents told them. They were not allowed to read their rotation evaluations (Tr. p. 112; Dennis Depo. p. 36). Further, the policies and regulations of the medical school do not state the numbers or types of courses which are required for graduation (Stip. No. 92).

In December, 1971, Horowitz took Independent Studies and received "credit." (Stip. 29, P.Ex. 83). Similarly, she received credit for her Pathology/Anatomy rotation in January-February, 1972 (Stip. 29, P.Ex. 83) and for her Pediatrics rotation in March and April (P.Ex. 83, Tr. p. 110).

Her next rotation in May, 1972 was Community Blood Bank for which she also received credit. Horowitz spent the summer at Menninger's Clinic in a psychiatry rotation for which she received credit (P.Ex. 83, Stip. No. 49).

Dr. William Sirridge, who as Miss Horowitz's docent oversaw and directed her education (Tr. p. 101), recommended her for advance standing as a year VI student in a letter and evaluation report of June 9, 1972 finding her above average in all respects (Stip. Nos. 42, 43, P.Ex. 32). Shortly thereafter, Dr. Ned Smull, Chairman of the Council on Evaluation, sent a letter dated June 29, 1972, to Dean Noback setting forth reasons that the Council on Evaluation believed that Horowitz required more than one academic year before meeting graduation standards. Horowitz was not informed that the Council on Evaluation would review

her status nor was she invited to attend. Similarly she was neither informed of, invited, nor permitted to attend any of the subsequent meetings of the Council or of the Co-ordinating Committee, nor was she even allowed to submit any documents or arguments in writing on her own behalf (Tr. pp. 236, 202, 208). Horowitz never saw or heard of the Smull correspondence (P.Ex. 33). As a result of this correspondence, she was sent two letters on July 5, 1972 from Dean Noback. The first was a memorandum listing the class designations for advanced standing students noting that she had been elevated to year VI, the most advanced of the student classifications, representing the final year of medical school (P.Ex. 35).

The second letter to Horowitz reiterated the substance of a prior conference at which she was informed that she was being placed on probation, but was advanced pursuant to schedule without an indication of her probationary status on her transcript (P.Ex. 36).

Horowitz was not asked to nor did she appear before either the Council on Evaluation or the Coordinating Committee prior to the decision to put her on probation (Stip No. 53, Tr. p. 236, P.Ex. 36). The conference informing her that she had been placed on probation was the first time the topic of probation had been discussed with her. At this conference Dean Noback acknowledged that her acquisition of information had been good. He gave the following reasons for placing her on probation:

> "Your acquisition of information is good. Your relationship with others has not been good and represents a major deficiency. You need to improve your relationship with others rapidly and substantially. This involves: Keeping to established schedules; meeting all clinical responsibilities on time and gracefully; attending carefully to personal appearance including

> hand washing and grooming; participating appropriately in the activities of the School; and directing criticism and suggestions maturely to your Docent and to the faculty member who is in charge of a curriculum block as you may have criticisms and suggestions." (P.Ex. 35)

Shortly after these letters her docent, Dr. William Sirridge, wrote a letter of recommendation dated August 10, 1972 indicating that Miss Horowitz had the highest class standing (P.Ex. 39). In another letter of recommendation dated August 17, 1972, written to Menninger Clinic at the request of Horowitz in respect to her application seeking admission into the clinic's residency program in psychiatry, Dr. Sirridge said he had no hesitancy in recommending her for a straight internship in psychiatry (Stip. No. 46, P.Ex. 40).

The following Fall, 1972, Horowitz ranked first on her National Board Examination Part I (Stip. 51). During that Fall Horowitz was in her docent unit rotation and was evaluated by her docent as having unsatisfactory clinical skills but was highly satisfactory and superior in all other categories (Stip. No. 50, P.Ex. 95). She received credit for the rotation (Stip. No. 49).

The Provost, E. Grey Dimond, issued a notice on November 22, 1972, promulgating rules and procedures of the U.M.K.C. Medical School (Stip. No. 48, P.Ex. 46). During December of 1972, Horowitz took an independent study rotation and received credit for the course, as she had for all courses she had taken (Stip. No. 29). During her obstetrics gynecology rotation, for which she also received credit, she was informed, January 26, 1973, that the Council on Evaluation had recommended that she not graduate in May of 1973 (Stip. No. 57). Further on February 7,

1973 she was informed in writing that the Coordinating Committee had met and accepted the Council on Evaluation's recommendation that she not graduate (P.Ex. 53, Stip. No. 58). She was informed that if she was dissatisfied with this decision she could take a set of oral and practical exams. This letter stated that Horowitz must make "very marked and very substantial improvement" in the areas of "clinical competence, peer and patient relations, personal hygiene and ability to accept criticism."

By letter of February 9, 1973, she elected to exercise the option of practical exams (P.Ex. 54, Stip. No. 59). After procedures were created for the practical exams, none having existed before this date, Horowitz was notified on March 15, 1973 that she was to be examined by seven physicians who had been instructed to "provide a careful, detailed and thorough assessment of (her) abilities . . ." (Stip. No. 60, P.Ex. 57). That same day the seven doctors were sent letters explaining the process by which Horowitz would be examined (P.Ex. 58) and Dean Noback prepared a memorandum which described the method of tallying the results of the seven physicians' examinations (P.Ex. 59). As the Court of Appeals found: "The Dean informed the seven physicians by letter and a meeting that they were to make one of three recommendations: a) graduation on schedule; b) continued probation and reassessment of her status in May, 1973; c) dismissal from the medical school." 538 F.2d at 1320 (Pet. App. A-5). During March and April, Horowitz was on the surgery rotation for which she received credit (Stip. 29, P.Ex. 83).

The seven doctors each sent letters regarding their evaluations of her (P.Ex. 60, 61, 63, 64, 65, 66, 68). Although the letters of the doctors do not easily fit into categories, it is evident that four of the seven doctors recommended that Horowitz either be allowed to graduate or remain in school on probation. These evaluations and recommendations did not follow the categories of recommendations specifically set out in Dean Noback's letter to the doctors (P.Ex. 58) nor were the evaluations tallied pursuant to Dean Noback's tallying procedure (P.Ex. 59, Tr. pp. 47, 48). The procedure for tallying the results of the recommendations (P.Ex. 59) required the Dean to call the seven examining physicians together if there was no clear majority evident from their letters. As the Court of Appeals found: "Although there was no clear majority opinion the panel was not called together as the procedures contemplated." 538 F.2d at 1320 (Pet. App. A-5).

Quarterly exams were given in May, 1973 on which Horowitz ranked second in her class in total score (Stip. No. 94).

The Council on Evaluation met May 1, 1973 and voted again that Horowitz would not graduate in May, 1973 (P.Ex. 67, Stip. No. 66). The Coordinating Committee on May 7, 1973 voted to sustain the Council's recommendation that she not be allowed to graduate (Stip. No. 71, P.Ex. 69). Following the decision of the Coordinating Committee on May 7, 1973, Dr. Sirridge, Dr. Smull and Dr. Noback met with Horowitz to tell her that both the Council on Evaluation and the Coordinating Committee had met and decided that her appeal to graduate would be denied and she would not graduate at that time. This meeting was confirmed by two letters dated May 11, 1973 (P.Ex. 70). Next the Council on Evaluation met on May 14, 1973 and recommended that Horowitz not be allowed to re-enroll barring receipt of reports that she had improved radically (Stip. 72, P.Ex. 73). On May 18, 1973 Dean Noback sent another letter to Horowitz reiterating their discussion of May 7, 1973 and informing her that the Council on Evaluation

would be meeting at some time to consider the extent to which she had improved (P.Ex. 71).

Horowitz's Emergency Room evaluation was submitted on May 25, 1973 and was the first course for which she received a no credit (Stip. No. 75, P.Ex. 94). She was the first student to take an Emergency Room rotation at Menorah Hospital (Stip. No. 76) and had taken the one hour course during the midst of the serial meetings of various councils and committees which were deciding her status at the school. Finally, on May 28, 1973, the Council on Evaluation voted to dismiss Horowitz from the medical school (P.Ex. 77, Stip. No. 73) and on June 4, 1973 the Coordinating Committee accepted the recommendation of dismissal (P.Ex. 78, Stip. No. 77) which was in turn upheld by Dean Noback. On July 6, 1973 Dean Noback formally informed Horowitz that she had been dismissed from the University of Missouri at Kansas City School of Medicine (P.Ex. 96, Stip. No. 78).

Horowitz was dismissed from the medical school for having allegedly failed to make adequate progress with regard to four areas, one arguably academic and three behavioral. In a letter from Dr. Smull to Dr. Sirridge (P.Ex. 49) the alleged deficiencies of Horowitz were listed as clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism. Although Horowitz has consistently denied these behavioral charges and although Dr. Dennis in his deposition stated that the allegations were of questionable validity, Horowitz has never been given an opportunity to appear at a hearing and rebut them. In this regard, Dr. Marjorie Sirridge, a member of the Coordinating Committee which finally made the recommendation that Horowitz be dismissed, stated for the minutes of the meeting of June 4, 1973 (P.Ex. 78) that she believed Horowitz had been the victim of prejudice by faculty staff and examiners, and she testified that because Horowitz was a woman she had been held to higher standards than other students (Tr. pp. 68-70). At none of the several meetings of the Council on Evaluation or the Coordinating Committee was Horowitz permitted to defend herself and rebut these allegations.

At no time prior to the filing of this lawsuit was Horowitz allowed to see the evaluations of her performance during any course rotations (Tr. pp. 187, 320) nor was she allowed to see or review the doctors' reports made during her rotation (Stip. No. 40; Tr. pp. 112, 230, 320). She never was allowed to appear before any session of the Council on Evaluation or the Coordinating Committee on her own behalf (Stip. No. 65; Tr. pp. 64, 82, 91, 121, 217, 466) nor was she ever informed prior to a meeting when these committees would be considering her status (Stip. Nos. 45, 57, 74, 78; Tr. pp. 236, 202, 238; P.Ex. 36, 53, 70). Her docent, Dr. William Sirridge, was her only contact with her course evaluations. She discussed with him his docent recommendations but she never actually saw them. She assumed they were substantially the same as he discussed with her (Stip. Nos. 42, 43, 44, 46). Dr. Sirridge never told Horowitz that her deficiencies were serious enough to result in her being put on probation, not graduating on time or being dismissed from school (Stip. No. 50; Tr. pp. 233, 240). Dr. Sirridge, as her docent, recommended to the Council on Evaluation that Horowitz be graduated (Tr. p. 144) but she was, instead, dismissed.

Prior to her dismissal, as the Court of Appeals found: "Horowitz was never given a chance to appear before the Council on Evaluation, the Coordinating Committee or the Dean, for a hearing during the dismissal procedure, nor was she informed of the time or place of any of their meetings. Neither was she given copies of the formal

evaluations or other evidence which the Council and the Committee considered." 538 F.2d at 1320 (Pet. App. A-6).

Subsequent to her dismissal from medical school, Horowitz was unable to take the employment that had been offered her by the University of North Carolina Medical School because that employment was conditional upon her receiving her medical degree. It is likely that Horowitz, who presently is unemployed and is taking graduate courses in a non-degree program in the Washington, D. C. area, will never be able to find employment in medicine or medically related fields nor will she ever be able to gain entrance to another medical school. The testimony of Dr. Hilliard Cohen that Horowitz had been stigmatized by her dismissal, that her dismissal was a "significant black mark" against her name, that she would have great difficulty finding employment or obtaining admission to a medical school, was uncontroverted at the trial (Tr. at 25-26). As the Court of Appeals held: "The unrefuted evidence here establishes that Horowitz has been stigmatized by her dismissal in such a way that she will be unable to continue her medical education, and her chances of returning to employment in a medically related field are severely damaged." 538 F.2d at 1321 (Pet. App. A-8).

Upon information and belief, the medical school is currently granting hearings to students who face dismissal. It is believed that seven students who were granted hearings were all allowed to "decelerate" their education by extending their studies for an additional semester or longer; one of these seven was dismissed after lack of success in "decelerated" study. As Dr. Mary Howell, former Assistant Dean of the Harvard Medical School, testified for Horowitz as an expert witness, giving students a hearing before imposing sanctions does not impede the mission of the medical school, it enhances it (Howell Depo. 51-52). Further, a

sister medical school, the University of Missouri at Columbia, under the supervision and direction of the same Board of Curators who are here Petitioners, has granted hearings to medical students since prior to the Horowitz dismissal at UMKC.

The medical school was placed on probation by the Joint Committee on Accreditation during the Summer of 1976, for reasons which included criticism of the grading and evaluation systems of the school. In its reply of August 8, 1976 the medical school referred to Horowitz (it is not known whether her name appeared in the report) as a rebuttal to that criticism. A representative of the medical school later was interviewed by a reporter for the *Kansas City Star* and again referred to Horowitz; such reference appeared without her name in an article in that paper on August 22, 1976: "The example was given of a student who received an excellent score on Part I of the exam, yet was dropped from the School for clinical deficiencies." The reference was clearly to Horowitz.

UMKC, as do most medical schools, requires applicants to explain fully the reasons for being required to leave any prior institution of higher education (P.Ex. 10). Horowitz thus cannot escape the allegations made against her by the medical school, allegations she had no opportunity to refute.

REASONS FOR DENYING THE WRIT

This Court should deny the petition for a writ of certiorari here sought because this case presents none of the considerations of Rule 19 which would support granting the writ. This case presents no important questions of federal law which need be settled by this Court, the decision of the court of appeals below was not in conflict with the decisions of other courts of appeal and was, in fact,

fully in accord with the decisions of this Court, as argued herein. Further, the court of appeals has not "so far departed from the accepted and usual course of judicial proceedings," Rule 19(1)(b), to require this Court to exercise its discretion to correct an injustice by granting the writ. For the reasons herein argued, this case was properly decided by the court of appeals and this Court should deny the writ here sought.

1. Respondent Is Entitled To Due Process Prior To Dismissal From Medical School Because Her Dismissal Is Based Upon Allegations Of Misconduct Or Behavioral Inadequacies.

Horowitz was entitled to procedural due process because her dismissal from medical school was not based exclusively upon an evaluation of her academic performance. It was based substantially upon behavioral characteristics Horowitz was alleged to have exhibited. The academic achievements of Horowitz were outstanding. Her scores on the National Board Examination were among the highest in her class and ranked her most favorably with other medical students throughout the nation. Her scores on the quarterly examinations administered by the medical school ranked her near the top of her class and she received credit for all clinical rotations except the last. She was, nevertheless, dismissed from the medical school for deficiencies denominated as failures to make improvements in clinical competence, peer and patient relations, personal hygiene and her ability to accept criticism. Three of these four areas of alleged failures on the part of Horowitz wholly concern characteristics of her behavior. See *Goss* v. *Lopez*, 419 U.S. 565, 42 L.Ed.2d 725, 95 S.Ct. 729 (1975) and *Dixon* v. *Alabama State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1961).

The allegation that her peer and patient relations were not adequate was concerned primarily with her alleged inability to get along with fellow medical students. There is nothing in the record to indicate her inability to get along with patients. The record is clear that her inability to get along with fellow medical students was caused substantially by differences between her and her fellow students, differences over which she had no control. Dr. Marjorie Sirridge, a docent at the medical school and a member of the Coordinating Committee, testified (Tr. pp. 68-70) that Horowitz had been the victim of prejudice throughout her experience at the medical school because she was a woman and because, in the eyes of members of the medical school community, she did not ". . . exemplify what they felt they were looking for in her appearance." (Tr. p. 69). See photographs of Horowitz, P.Exs. 111, 112 and 113, concerning her appearance.

Similarly, Dr. Dennis, in his deposition, made it clear that Horowitz, because of her unattractive appearance, Eastern accent, and her narrow interests, became the joke of the medical school and the recipient of practical jokes and exclusions from normal social relationships. Whether the failure to establish adequate peer relationships was caused by Horowitz or was beyond her control is the type of factual determination best made by the medical school, with the protections afforded to students by minimal procedural due process. See *Brookins* v. *Bonnell*, 362 F.Supp. 379 (E.D.Tenn. 1973) where the Court held that similar allegations of a student's non-conformance with school regulations required the protections of due process.

The allegation that Horowitz was deficient with regard to personal hygiene related to a charge that she had too frequently worn lab coats that were either dirty or had yellowed, her alleged failure to keep her hair neatly

combed, and her alleged failure on at least two occasions to have adequately cleaned her fingernails. These allegations clearly raise factual issues, issues preferably resolved by a procedure that provides for input by the student and response by the student to allegations made against her. Allegations such as these are not academic; they are allegations of specific conduct deemed to have been inappropriate and as such are capable of being resolved as are any other factual disputes before administrative bodies.

Finally, the alleged inability of Horowitz to accept criticism raises a similar distinct factual issue capable of being resolved in a like manner. To the extent that the dismissal of Horowitz from medical school was based significantly upon any of these allegations of inappropriate conduct, as indeed her dismissal was, she should have been afforded, at a minimum, notice of the specifics of the general allegations and an opportunity to appear before, speak to, and submit documents to the committee that was charged with the ultimate responsibility of making factual determinations on these issues. It is conceded by the medical school that plaintiff was not afforded even these most minimal procedural protections. She in fact was given no notice that her status at the medical school would be considered by any of the committees at any time.

The evidence established that the scholastic and academic achievements of Horowitz were not at issue in her dismissal (P.Ex. 78); rather, behavioral requirements subjectively established by the medical school were the chief concern (Stip. Nos. 35, 36, 38, 45, 54; Tr. pp. 29, 36, 120, 127-130, 165-166, 168, 217, 218, 428, 435, 478; P.Exs. 58, 32, and 36). No dispute exists as to the behavioral aspect of Horowitz's alleged unsatisfactory performance. Dean Noback (Tr. p. 428), Dr. Smull (Tr. p. 478), and Dr.

William Sirridge (Tr. p. 120) all agree as to that fact. Dr. William Sirridge, docent of Horowitz, testified:

> Q. Primarily, had her deficiencies been behavioral?
>
> A. Her deficiencies were behavioral enough. . . (Tr. p. 120).
>
> Q. . . . so from the time she was placed on probation until May 1, 1973, she presumably received credit for having performed satisfactorily in all her rotations in terms of the academic or scholastic aspects in any event, is that correct?
>
> A. As far as I know.
>
> Q. The only problems that continued are the behavioral problems that we listed earlier?
>
> A. Correct (Tr. p. 130).

These behavioral factors included allegations of absenteeism, relationships with other people, meeting clinical responsibilities gracefully and on time, personal appearance, participation in school activities, and directing criticism and suggestions maturely (Stip. No. 45). These are all matters of fact which could and should have been resolved in a due process setting where Horowitz would be given notice and an opportunity to appear and be heard in her own defense. The charges leveled against Horowitz do not involve standards of "achievement in an esoteric academic field," *Brookins* v. *Bonnell*, *supra* at 383. They involve, instead, factual questions customarily resolved in a fact-finding hearing.

Thus, where Horowitz was dismissed from medical school for reasons other than simply her course failure or her failure to meet scholastic or academic performance criteria, she was entitled to the minimal protections of due process. Where Horowitz was dismissed for such behav-

ioral characteristics or conduct as personal appearance, participation in school activities, and wearing a yellowed lab coat, allegations of fact well-suited for resolution in a fact-finding forum, Horowitz was denied procedural due process by not having been given written notice of the charges against her and an opportunity to appear before the appropriate committees and rebut such allegations.

2. The Court Of Appeals Properly Held That Respondent Was Entitled To The Protections Of Due Process Because The Evidence Was Uncontroverted That She Had Been Significantly Stigmatized By The Dismissal.

Although Horowitz contends that her dismissal from medical school was for conduct related reasons and she is therefore entitled to the benefits of due process, even if her dismissal were for academic deficiencies she is entitled to due process. Horowitz was dismissed from the medical school in a manner that deprived her of liberty and property by interfering with her right to complete her medical education and by seriously damaging her standing and associations within the medical community. *Board of Regents* v. *Roth*, 408 U.S. 564, 573, 33 L.Ed.2d 548, 558, 92 S.Ct. 2701 (1972), by demeaning her "good name, reputation, honor or integrity." *Wisconsin* v. *Constantineau*, 400 U.S. 433, 437, 27 L.Ed.2d 515, 519, 91 S.Ct. 507 (1971), and by imposing on her "a stigma or other disability" that has precluded other employment and educational opportunities in the medical field, *Board of Regents* v. *Roth*, *supra*, at 574, 33 L.Ed.2d at 559.

On June 4, 1973, the Coordinating Committee of the school voted to terminate Horowitz by a vote of five for termination, no votes against termination and three abstentions (P.Ex. 78). The minutes of that meeting reflect the

reasons for her dismissal and the concerns of members of the committee. The rationale for the dismissal was whether Horowitz had made sufficient improvement since July, 1972, when she had received a letter from the Dean informing her that she should make improvement in the areas of keeping to established schedules; meeting all clinical responsibilities on time and gracefully; attending carefully to personal appearance including hand washing and grooming; participating appropriately in the activities of the School; and directing criticisms and suggestions maturely to her Docent (P.Ex. 36). Although Horowitz had been advised that these matters were of concern to the school when she was placed on probation in July, 1972, she had never been informed that they might form the basis for her dismissal from the medical school. She was, in fact, never even advised that the Coordinating Committee would meet in June, 1973 to consider her dismissal.

The recommendation of the Coordinating Committee that she be dismissed was upheld by the Dean and the minutes reflecting that action were placed in her student file where they were accessible to other medical schools or employers. Dr. Hilliard Cohen testified (Tr. pp. 25-26), that as a result of the action of the medical school Horowitz now suffers a significant disability in that she is likely to be precluded from attending any other medical school and, similarly, she is likely to be excluded from many employment opportunities in medically related fields. The disabilities suffered by Horowitz are particularly acute because of the reasons for her dismissal. She had a superior record of academic achievement and her dismissal for behavioral characteristics worsens the disability placed upon her. Because she was dismissed for her alleged failure to make sufficient improvement in the areas of clinical competence, peer and patient relations, personal hygiene,

and the ability to accept criticism (P.Ex. 78), her dismissal from the medical school has stigmatized her future in medicine or medically related fields. Dr. Cohen, whose testimony was uncontroverted, was asked whether in his opinion a dismissal from medical school for the reasons as those suffered by Horowitz would be substantially disqualifying to an applicant seeking employment in medically related fields and he answered:

> Yes, I think it would be a significant black mark against that person's name, I think it would stigmatize that individual, I think that person would probably be—well, would have great difficulty to get into another medical school, if at all (Tr. p. 26).

Dr. Cohen, who, as a medical doctor, an educator and an administrator had over 30 years experience hiring physicians and medical personnel, testified that Horowitz, because of her dismissal, was virtually precluded from future employment or educational opportunities in the medical field. Where medical schools require, as this one does (P.Ex. 10), applicants to explain fully reasons for dismissal from previous schools, it is reasonable that Dr. Cohen believes that Horowitz has been permanently stigmatized. In applying to other medical schools, as Horowitz has done without success since her dismissal, Horowitz is required to explain that she was dismissed because of reasons that include "attending carefully to personal appearance, including hand washing and grooming" (P.Ex. 36) and "peer and patient relations, personal hygiene and ability to accept criticism" (P.Ex. 53), all allegations against which Horowitz was never permitted to defend herself. Where, as here, the dismissal has such permanent effects and where, as here, attempted re-entry into the medical field assures dissemination of the reasons for dismissal, the publication doctrine of *Bishop* v. *Wood*, 48 L.Ed.2d 684, 96 S.Ct. 2074 (1976) is inappropriate. As the Court of Appeals found, 538 F.2d at 1320 (Pet. App. A-7), the medical school's own application for admission (P.Ex. 10) forces such disclosures.

The action of the medical school thus denigrated the ability of Horowitz to perform as a professional in medicine or medically related fields, going well beyond a mere recitation of alleged failure to perform to the standards of the medical school, depriving her of a significant interest in liberty. Thus, because the medical school imposed upon Horowitz a ". . . stigma or other disability . . ." that foreclosed her freedom to take advantage of other opportunities she is entitled to the benefits of procedural due process, *Board of Regents* v. *Roth*, 408 U.S. 564, 573, 33 L.Ed.2d 548, 92 S.Ct. 2701 (1972); *Greenhill* v. *Bailey*, 519 F.2d 5 (8th Cir. 1975); *Wellner* v. *Minnesota State Junior College Board*, 487 F.2d 153 (8th Cir. 1973).

3. Respondent Was Denied Due Process By The Failure Of The Medical School To Follow Its Own Rules And Regulations In Dismissing Her.

Even if the medical school was not required to provide Horowitz with minimal due process, a contention she denies, the medical school is required to follow its own rules and regulations. Where institutions grant procedural protection in excess of the protections required by law such institutions must follow their own procedure. *Service* v. *Dulles*, 354 U.S. 363, 1 L.Ed.2d 1403, 77 S.Ct. 1152 (1957). See also *Behagen* v. *Inter-Collegiate Conference of Faculty Representatives*, 346 F.Supp. 602 (D.Minn. 1972), where the court stated:

> It is elemental that action beyond the scope of a body's own procedural regulations is in violation of due process of law.

Similarly, in *Warren* v. *National Association of Secondary School Principals*, 375 F.Supp. 1043 (N.D.Tex. 1974), it was held that where an educational institution creates procedural rights above a constitutional minimum, its own rules proscribe the boundaries of due process. The dismissal of Horowitz from the medical school was deficient when measured against its own rules and regulations, in two respects.

First, Provost Dimond circulated a memorandum setting forth newly promulgated procedures of the medical school relating to the evaluation of students and the status of students at the medical school. This memorandum was made available to students in the December 11, 1972 School of Medicine Newsletter (Stip. No. 48) and set out the procedures to be followed regarding a student's probation or removal from school. Paragraph 7 of this letter (P.Ex. 46, 110) provided that the Council on Evaluation would normally review evaluation forms of the students, results of quarterly examinations, and the recommendations of the docent for each student. The procedure provided, further, that if the Council on Evaluation "finds itself operating without adequate information, it has the responsibility of calling the student forward for an interview. . ." The Council on Evaluation did, in fact, find "itself operating without adequate information" and utilized, as Dean Noback testified, (Tr. p. 178) peer evaluations which he described as taking place when "students are on concurrent assignments in any of the major curriculum rotations." He went on to testify that peer evaluations put "in the hands of the Evaluation Council on a sequential basis the assessment of individuals about the performance characteristics of the students. . ." Even though the Council on Evaluation thus acquired additional information beyond the three usual sources it failed to call Horowitz forward

for an interview as required by its own rules and regulations. Thus, Horowitz was denied the only opportunity for a hearing which the rules provide to her in a situation where her status at the school was in jeopardy. Failure of the medical school to follow its own regulation deprived Horowitz of due process.

Secondly, the medical school failed to follow its own procedures for determining the results of a set of oral and practical examinations administered to Horowitz. On March 15, 1972, Dean Noback sent a letter to each of seven physicians who had been asked to give oral and practical examinations to Horowitz. This letter of instruction (P.Ex. 58) asked the physicians to reach one of three possible recommendations: that she graduate on schedule, that she remain on probation, or that she be dropped from the medical school. Simultaneously, Dean Noback prepared a memorandum establishing the procedure for compiling the recommendations of the panel of examining physicians (P.Ex. 59). This memorandum stated that a majority of the recommendations of the examining panel would determine the judgment of the panel. Further, if there was not a majority opinion, the Dean would call the panel together promptly to discuss the situation and the evaluation of the individual student. A numerical average of the examining panel's judgments would be used to resolve differences in judgment if there was not a clear majority opinion.

The letters of the seven examining physicians (P.Ex. 60, 61, 63, 64, 65, 66, and 68) when divided among the three possible recommendations required by Dean Noback (P.Ex. 58) reveal there is clearly no majority for any one of the three recommendations. The tallying memorandum of Dean Noback (P.Ex. 59) provided that if there was no majority opinion then the panel would be called together

to discuss the situation and the evaluation of the student. The seven examining physicians were never called together to participate in any type of discussion concerning Horowitz (Tr. p. 47) nor did they consult with each other (Tr. p. 48). It was further provided in the memorandum that a numerical average of the examining panel's judgment would be used to resolve any differences in judgment if there was not a clear majority opinion. However, there was no numerical tally, nor provision for such, provided to the examining physicians (Tr. p. 48). Dean Noback admitted that the tallying memorandum and the creation of the examining panel were additional parts of the student evaluation process outlined in the November 22, 1972, letter of the Provost (Tr. p. 189).

The medical school failed to follow its own rules by not carrying out the further requirements of the tallying memorandum for a conference of the examining physicians and failing to utilize a non-subjective numerical method for determining the judgment of the panel. The failure of the medical school to carry out the announced procedure denied Horowitz the due process she reasonably could expect as announced and outlined in the regulations of the medical school. This departure from the medical school's printed procedures was in itself a denial of due process.

Thus, in two important respects Horowitz was denied the protection ostensibly afforded to students at the medical school by the institution's own rules and regulations. She was not called in for an interview before the Council on Evaluation and was thus denied her only opportunity for even the semblance of a hearing. In addition, after her clinical skills were reviewed by a panel of examining physicians the medical school failed to follow its own procedure for tabulating the results of that review process. Each of these failures substantially prejudiced the ability

of Horowitz to protect her status at the medical school. The failure of the school in these two respects was especially harmful to her where the regulations of the school did not otherwise provide means for Horowitz to rebut allegations against her or to present her view of factual controversies. Thus, even the extremely minimal procedural protections afforded by the school's own rules, particularly important in light of the paucity of other procedural protections, were denied her.

4. Respondent Was Denied Substantive Due Process Because Of The Arbitrary And Capricious Nature Of Her Dismissal.

Although courts will not normally substitute their view for that of an educational institution as to the fitness of a student for graduation, where the decision to dismiss a student is arbitrary or capricious the courts will set it aside. *Connelly* v. *University of Vermont and State Agricultural College*, 244 F.Supp. 156 (D.Vt. 1965); *Keys* v. *Sawyer*, 353 F.Supp. 936 (S.D.Tex. 1973). As has been noted, the standard is a narrow one. *Greenhill* v. *Bailey*, 519 F.2d 5, n.12 (8th Cir. 1975). The decision to dismiss Horowitz from the medical school was, however, under the circumstances of her educational experience both arbitrary and capricious, and the evidence supporting that conclusion is compelling.

A. The Decision to Dismiss Horowitz Was Summarily Reached

Horowitz was never informed that the review of her status at the medical school might result in her dismissal. She was, in fact, informed in February, 1973, that she had not made sufficient improvements since being put on probation the preceding July and, therefore, would not be allowed to graduate in May. No recommendation had been

made at that time by the Council on Evaluation as to whether or not she would be dismissed from the medical school or allowed to continue her studies to make up her deficiencies. Horowitz was informed that she might subject herself to a set of oral and practical examinations by a panel of seven physicians, an option she elected to take advantage of.

After the panel of physicians had reported to the Dean and the Council on Evaluation had reviewed those reports Horowitz was informed by the letter from Dean Noback on May 11, 1973 (P.Ex. 70) that the decision of the Council on Evaluation that she not graduate that month would not be changed. Even at that late date she was not informed that she would face dismissal from the medical school. In fact, both the Council on Evaluation and the Coordinating Committee met several times within the next three weeks to consider her dismissal from the medical school, meetings of which she was given no notice nor was she even informed that they would be meeting at unspecified times for the purpose of considering her dismissal.

Under the circumstances prevailing at the medical school at that time this course of action was both arbitrary and capricious. The medical school had been formed only some two years before. Horowitz had been admitted at the time the medical school opened as an advanced standing student who expected to be able to graduate at the completion of two years study. Although the medical school had created a skeleton of procedures dealing with the evaluation of the progress of students through the school, those procedures had neither been carefully thought out nor given sufficient detail to be fair in their actual implementation.

Horowitz thus found herself in May, 1973, in a position that the medical school had not anticipated and, therefore, had not made provisions for dealing with. Horowitz had been told that she would not graduate in May, 1973, the opinions of seven examining physicians had been sought on whether she should graduate in May and of those seven, four recommended either that she graduate at that time or remain in the school on probation (P.Ex. 60, 61, 65, 68). The school, however, having established the procedure to obtain the judgment of the seven examining physicians chose to ignore it and, without notice to Horowitz, proceeded to dismiss her from the medical school that very month. The decision adopted pursuant to this ad hoc procedure was arbitrary in the extreme because: a) a procedure had been established to obtain the judgments of the examining physicians and those judgments were ignored; b) the examining procedure had been established to determine whether she would graduate or continue in the medical school and yet this purpose was altered without notice to Horowitz to form a basis for her dismissal; and c) it was reached by contemporaneously created procedures which failed to marshall the facts on the question ultimately reached, dismissal, rather than the question originally contemplated, non-graduation.

B. The Medical School Summarily Excluded the "Deceleration" Option

The dismissal of Horowitz was also arbitrary and capricious in a second major regard. Although several other students at this relatively new medical school had been "decelerated" in their studies, such an option was not made available to Horowitz. Dean Noback conceded in his testimony that students at the medical school had been "decelerated" in their progress through the school, a term that means they were given additional time to complete their education and make up courses in which their per-

formance had been unsatisfactory (Tr. pp. 213, 214). The practical effect of such a deceleration was to extend the stay of such students at the medical school and the purpose of it was to allow such students to obtain skills they otherwise did not possess. It provided an opportunity for students to obtain clinical skills, master concepts, learn facts, and acquire all the other usual attributes of a medical education. Dr. Marjorie Sirridge testified that not only did this medical school provide opportunities to students to extend their education but such opportunities are available in traditional medical schools as well (Tr. pp. 66-67). The failure similarly to provide an opportunity to Horowitz to extend her stay at the medical school to master those skills or concepts in which she was deemed to be deficient was arbitrary. It was especially arbitrary under these circumstances where the medical school, having not yet fully detailed its procedures for reviewing the status of students, had effectively precluded students from advancing their positions at a hearing before committees reviewing their status. Thus, where the "deceleration" option could be extended to students the denial by the medical school of an opportunity to Horowitz to appear before any of the evaluation committee meetings and present her case and, perhaps, argue the appropriateness of deceleration under the circumstances of her studies, makes the decision to dismiss her all the more arbitrary.

C. The Medical School Arbitrarily Changed Its Standards of Evaluation and Applied Them Ex Post Facto

The decision to dismiss Horowitz was arbitrary for a third significant reason. The standards by which the performance of Horowitz at the medical school was measured were altered during the course of her studies. In

the Spring of her first year at the medical school Horowitz spent two months in the Pediatrics rotation for which she received a "credit" on her transcript immediately upon completion of the course (Stip. No. 32). In spite of the fact that Horowitz had received credit for completion of the Pediatrics rotation the medical school, when considering her dismissal a year after her completion of the Pediatrics rotation, deemed her performance in that course to have been unsatisfactory (Stip. No. 33). Prior, however, to her dismissal from the medical school she had never been provided copies of the evaluation reports concerning Pediatrics (Stip. No. 40). Thus, Horowitz reasonably thought at the completion of her Pediatrics rotation that her performance had been satisfactory because the school, in choosing to signify her completion of the course on her permanent transcript had chosen the notation "credit" from among three possible notations, credit, no-credit, and incomplete. Although her docent and the Dean at some point in time learned that her performance in Pediatrics was being held against her in the consideration of her dismissal from the medical school, she was never informed that her performance was unsatisfactory (Tr. p. 187) and, therefore, she did not have an opportunity to seek permission to repeat the rotation even though such permission might well have been granted (Tr. pp. 187-188).

The practical effect of giving Horowitz credit for completing the course and then holding her performance in that course against her was to impose, post facto, a significant change in the standards of evaluation applied to Horowitz without giving her an opportunity to correct any deficiencies revealed by the more stringent standard adopted. Thus, the post facto imposition of a standard of review was arbitrary and capricious and worked to the substantial detriment of Horowitz when her status

at the medical school was reviewed, without notice to her, in May, 1973.

Similarly, in the Spring of her second year at the medical school, while she was on probation, Horowitz participated in a Surgery rotation and in an Obstetrics-Gynecology rotation and her performance in those rotations was deemed to have been satisfactory. In spite of her satisfactory performance in these rotations Dean Noback testified that in making the decision to dismiss her from the medical school these two rotations had "impacted negatively" upon her status at the medical school (Tr. pp. 431-433). Again, Horowitz was subjected, to her detriment, to a changing standard of evaluation. Whereas her performance in these two rotations had been deemed satisfactory at the completion of each course they were later utilized by the medical school as evidence supporting her dismissal because they had not been satisfactory enough. Such an alteration in the standards by which her performance was measured resulted in an arbitrary and capricious decision to dismiss her. Horowitz was entitled to rely upon her expectancy that the medical school would not change the standards by which her performance was evaluated without notice to her. She was entitled to rely upon her expectation that new standards of evaluation would not be retroactively applied to her. The changes in evaluation adopted by the medical school thus deprived Horowitz of a property interest in the completion of her education without arbitrary alterations in policy. Where the changes in policy resulted in the dismissal of Horowitz from the medical school, she was denied due process of law where no opportunity for a hearing was provided. *Perry* v. *Sindermann*, 408 U.S. 593, 33 L.Ed.2d 570, 92 S.Ct. 2694 (1972).

D. The Dismissal of Horowitz Was Especially Arbitrary and Capricious in the Context of Her Medical School Experience

The dismissal of Horowitz from the medical school is made all the more egregious when the failure to provide her notice and an opportunity for a hearing, failure to allow her the "deceleration" option, the failure to accept the judgment of a majority of the seven examining physicians, and the application of shifting standards to the evaluation of her performance in pediatrics, surgery, and ob-gyn are viewed in context of the total experience of Horowitz at the medical school.

The medical school was established in 1971 as an experimental school designed to educate students to become "safe" physicians who had an orientation to the delivery of primary health care, either as family physicians, general practitioners, or clinicians. It was further hoped that the medical school would produce physicians to deliver medical care where it was most needed, in rural areas and in heavily populated urban centers. In spite of this conscious design to produce primary care oriented physicians, Horowitz was admitted as an advanced standing student with an expressed interest in research and a disinclination for concentration on "clinical instruction." (P.Ex. 10). One of the two interviewers who met with Horowitz before her admission to the medical school rated her good, very good, or excellent in all categories with the exception of personal appearance which was noted to be unsatisfactory. The interviewer wrote at the bottom of the interview sheet the following:

> The candidates (sic) personal appearance is against her—her interests in medicine are psychiatry—wants to teach in a med school—she has a slight speech

impediment—I don't believe she fits our program. (P. Ex. 15).

See photographs of Horowitz, P.Exs. 111, 112 and 113. In spite of the knowledge of at least some persons at the medical school of the inappropriateness of Horowitz for the clinically oriented structure of the medical school, she was admitted nevertheless. Her docent, Dr. William Sirridge, testified that if he had known of this interview report, Horowitz would not have been admitted to the medical school.

Dr. Marjorie Sirridge testified that the physical appearance of Horowitz was a drawback to her at the medical school in that it interfered with her clinical practice of medicine even though it was not an appropriate standard by which to measure a "safe" physician (Tr. pp. 74-75). The docent of Horowitz, Dr. William Sirridge, testified that to a certain extent the observation that Horowitz had become a class joke was correct and that in part this difficulty may have been caused by her physical appearance (Tr. pp. 104-105). Dr. Dennis testified that Horowitz was overweight, unattractive, unkempt, but not uncleanly, had a speech impediment, and was the joke of the medical school (Dennis Depo. pp. 8-9) in spite of her outstanding academic achievements. For these reasons a considerable amount of ill will was generated against her, among those students and a few faculty members, some of whom were in positions to influence her dismissal (Dennis Depo. pp. 7-11; 18-19; 22-27).

Thus it appears that in spite of her excellent academic and scholastic achievements, it became apparent to the medical school that Horowitz had neither the requisite personality nor appropriate physical appearance to be a "safe physician" in the mold in which the school was casting its students. Once a determination had been made

that she was not appropriate her dismissal became a certainty and she was dismissed notwithstanding the procedural niceties of due process or the problems created by such facts as credit she had earned in rotations or the majority judgment of the seven examining physicians that she either graduate or be continued on probation. When viewed in this context the medical school by not allowing her the option of "deceleration", by not giving weight to the judgment of the examining physicians, and by imposing upon her shifting standards of evaluation, acted arbitrarily and capriciously.

CONCLUSION

Respondent urges this Court to deny the writ of certiorari sought by petitioners. As the record of this case demonstrates, respondent was entitled to due process because her dismissal from the medical school was substantially for reasons of alleged inappropriate behavior, allegations she was not permitted to refute, because she was significantly stigmatized by her dismissal, because the medical school failed to follow its own rules and regulations, and because her dismissal was arbitrary and capricious. Respondent, whose academic achievements were outstanding, is entitled to elementary due process before her years of preparation for a medical career are so swiftly and permanently rendered useless. For these reasons respondent urges this Court to deny the Writ.

Respectfully submitted,

ARTHUR A. BENSON II
2525 Commerce Tower
911 Main Street
Kansas City, Missouri 64105
(816) 842-7604
Attorney for Respondent

Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 76-695

BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI: MEMBERS OF THE BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI, Individually and in Their Official Capacities, et al.,
Petitioners,

vs.

CHARLOTTE HOROWITZ,
Respondent.

BRIEF OF PETITIONERS

JACKSON A. WRIGHT
MARVIN E. WRIGHT
JAMES S. NEWBERRY
TED D. AYRES
University of Missouri
227 University Hall
Columbia, Missouri 65201

FRED WILKINS
SHUGHART, THOMSON & KILROY
9th Floor, Commerce Bank Building
Kansas City, Missouri 64106
Attorneys for Petitioners

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 76-695

BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI; MEMBERS OF THE BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI, Individually and in Their Official Capacities, et al.,
Petitioners,

vs.

CHARLOTTE HOROWITZ,
Respondent.

BRIEF OF PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported in 538 F.2d 1317 (1976), and is set out in the appendix, P. 48. The order of the United States Court of Appeals for the Eighth Circuit denying Petitioners' petition for rehearing or hearing by court en banc, including the dissent thereto, entered on the 2nd day of September, 1976, is set out in the appendix, P. 56. The opinion of the United States District Court for the Western District of Missouri is not reported, the opinion is set out in the appendix, P. 26.

JURISDICTION

Respondent initiated the case at bar alleging jurisdiction under 42 U.S.C. 1983, 28 U.S.C. 2201, and 28 U.S.C. 1343 (3), 1343(4) and 1331(a). The judgment of the United States Court of Appeals for the Eighth Circuit was entered on July 16, 1976. The petition for rehearing or hearing en banc was denied on September 2, 1976. The Supreme Court granted a stay of mandate on November 1, 1976. Petitioners filed with the Supreme Court a Petition for a Writ of Certiorari on November 17, 1976 and the Supreme Court granted the requested Writ of Certiorari on April 18, 1977. The jurisdiction of this court rests on 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

This case involves the due process clause of the Fourteenth Amendment to the United States Constitution, said due process clause stating ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; . . .". U.S.C.A. Constitutional Amend. 14, Section 1

QUESTIONS PRESENTED FOR REVIEW

1. Is a medical student in a public institution of higher education entitled, pursuant to the Constitution of the United States and the Fourteenth Amendment thereto, to a notice of charges and a hearing prior to dismissal from medical school for deficiency in academic performance?

2. Does the dismissal without a formal hearing of a medical student from a public institution of higher education for deficiency in academic performance impose such a stigma or disability upon the student as to amount to a deprivation of liberty under the Fourteenth Amendment, when the student has prior notice and knowledge of the deficiency and the subsequent dismissal and reasons therefor were not made public?

3. If Respondent be found to be entitled to procedural due process prior to dismissal for deficient academic performance, did Respondent receive such procedural due process as is required in an academic determination of qualifications by a medical school?

STATEMENT OF CASE[1]

The case at bar was filed in the Federal District Court for the Western District of Missouri as an action for declaratory judgment and injunctive relief and damages by Respondent, Charlotte Horowitz (hereinafter referred to as Respondent) against The Curators of the University of Missouri, a public corporation, Richardson K. Noback, Dean of the School of Medicine of the University of Missouri-Kansas City and E. Grey Dimond, M.D., Provost for Health Sciences of the University of Missouri-Kansas City (hereinafter referred to as Petitioners). Respondent claimed that she had been denied certain rights guaranteed her by the Constitution and laws of the United States by the failure of Petitioners to graduate Respondent from the School of Medicine of the University of Missouri-Kansas City. Respondent claimed deprivation of due process

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[1] Memorandum and Opinion refers to Federal District Court Order and Memorandum set forth in the Appendix.

Stipulation refers to Stipulations of the parties filed in Federal District Court.

Defendants' exhibits refers to petitioners' exhibits introduced in Federal District Court.

T. refers to official transcript of Federal District Court trial Proceedings filed in Court of Appeals.

of law in that the Medical School of the University of Missouri-Kansas City, in evaluating her academic performance, failed to provide her with a notice of charges and a hearing on the issue of the evaluation of her academic performance. She further claimed denial of equal protection in that her academic evaluation was carried out in a manner that caused her to be disadvantaged by her sex, religion and physical appearance and finally that the decision to not graduate her from Medical School was arbitrary, capricious and unreasonable in that there was not sufficient evidence upon which Petitioners could reasonably find that Respondent was not qualified to graduate with the M.D. degree. Respondent further claimed that Petitioners did not follow their own rules in granting to Respondent the appeal procedure which Respondent elected to utilize (A. 4, Stip. I, II).

Upon the establishment of the School of Medicine at the University of Missouri-Kansas City there was adopted a document entitled "Academic Plan for the School of Medicine of the University of Missouri-Kansas City" which document contains reasonable rules, regulations, policies and procedures utilized by the University of Missouri-Kansas City School of Medicine in the education of students at said Medical School. This document establishes the Council on Evaluation composed of faculty and students, which Council is charged with the responsibility of the overall academic evaluation of student performance in the School of Medicine. The Academic Plan establishes a Coordinating Committee with review power over decisions and or recommendations of the Council on Evaluation on matters of academic evaluation of student performance. The rules, regulations, policies and procedures do not grant to a student the right to a notice of charges and hearing before the Council or Committee wherein an evaluation is being made of the student's overall academic performance and status in the School of Medicine (A. 6, 17, Stip. III 6, 52; Def. Ex. 1; A. 75, T. 58, 175, 375).

The School of Medicine established as a primary goal that of educating and graduating medical students who are safe physicians with the capability of rendering primary care to the general public (A. 46, Memo and Order, Judge Jurgens, page 24; A. 24 Stip. III, 83; A. 141, 143, T. 60, 370-373). The School of Medicine established the requirement that to be graduated from the School of Medicine of the University of Missouri-Kansas City a student must be qualified as a competent and safe physician, qualified to function as a safe physician in rendering primary medical care to the general public (A. 23, Stip. III 81; Def. Ex. 1, 2; A. 91, 92, 108-110, 141-143, 161-165, T. 90, 148-152, 370-375, 456, 462).

Respondent was admitted as a student with advanced standing at the University of Missouri-Kansas City School of Medicine for the academic year beginning in August, 1971 (A-10, Stip. III 22).

The Respondent knew at her time of enrollment in the School of Medicine that to qualify for graduation as a safe physician it would be necessary for her to be competent not only in the basic sciences applying to medicine but also to obtain the necessary degree of proficiency in clinical skills and competency to be qualified for graduation as a safe physician with the M.D. degree irrespective of Respondent's future intentions or career goals. Respondent knew that Petitioners expected and would require of Respondent the same qualifications for graduation, including clinical competency, as any other student irrespective of whether or not Respondent intended to practice medicine by rendering primary care to patients or to enter a career of academic research (A. 11, Stip. III 26; A. 123, 128, 129, 135, 142, 143, T. 222, 246, 262-263, 328, 373, 375) (A. 41, Memo and Order, Judge Jurgens, page 18). In Respondent's own words "I felt that I would need to develop the same clinical skills as any student in the core curriculum in a typical medical school—or average medical school." (A. 135, T. 328).

Respondent was notified in March, 1972, by her Docent (supervising physician, ombudsman and teacher, A. 97, T. 101) some seven months after being admitted to the School, that Respondent's performance in her pediatrics rotation was deficient in that her rapport with patients and her expertise in coming to the fundamentals of the clinical problem were below those of her peer group, that she was erratic in her attendance in the pediatric clinic and that several physicians were disturbed because of Respondent's lack of personal hygiene (A. 12, Stip. III 34; A. 100, 101, 160, T. 229, 107-108, 454). Though Respondent understood the contents of the communication, Respondent did not consider the letter as being constructive criticism and in fact said that there was absolutely no merit to the letter (T. 265-267). Throughout the pediatrics rotation, because of concern for Respondent's unsatisfactory progress in clinical performance, the pediatrics faculty offered her remedial help and attempted to assist her on a one-on-one basis to develop clinical competency and correct deficiencies (A. 157-160, T. 450-453).

On July 5, 1972, Respondent was advised by the Dean of the Medical School by letter that she was placed on probation and informed that she was deficient in keeping to established schedules, meeting all clinical responsibilities on time and gracefully, attending carefully to personal appearance including handwashing and grooming, participating appropriately in activities of the School and directing criticisms and suggestions maturely to her Docent and to the faculty member in charge of the curriculum block as she might have criticisms and suggestions. The written notification of July 5, 1972 followed a complete review by the Council on Evaluation of the academic performance of Respondent and followed a discussion wherein the Respondent was orally informed of the performance deficiencies by the Dean, the Chairman of the Council on Evaluation and the Docent of the Respondent (A. 15, 16, Stip. III 45; A. 117, 124, 146, T. 208, 209, 235, 386, 387; A. 180, Def.

Ex. No. 8). In discussing the deficiencies and areas of concern with the Respondent, each point mentioned in the letter was explained and discussed twice, not just once, so that Appellant would understand where improvement was needed (A. 146, 147, T. 268-271, 386-387).

In October, 1972 the Dean and her Docent had a meeting with the Respondent to review her probationary status with her because her Docent was concerned about her performance. She was advised of concern over her performance and deficiency therein and ways were sought to offer her additional assistance and support. (A. 117, 146-148, T. 208, 209, 387-389).

The Council on Evaluation of the School of Medicine met on December 26, 1972 to review the Respondent's academic performance in the School of Medicine and the Council voted unanimously to approve a recommendation which provided "the Council on Evaluation recommends that this student be continued on probation and not be considered as a candidate for the M.D. degree in June, 1973. The student may choose to remain at UMKC School of Medicine until June 1, 1973 but may not continue beyond that date unless there is radical improvement in the following areas: clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism." (A. 17, 18, Stip. III 54, 55, 56) The student's Docent recommended graduation, though he didn't deem her qualified, because he thought she would go into psychiatry and wouldn't need clinical competency. The Council considered it irrelevant what Respondent would do following graduation because the responsibility was graduation of only competent, qualified, safe physicians. (A. 164-166, T. 461-462) This recommendation was approved by the Coordinating Committee of the School of Medicine and in January, 1973 Respoadent met with her Docent, Dr. William Sirridge, the Chairman of the Council on Evaluation, Dr. Ned Smull and the Dean of the School of Medicine, Dr. Richardson

K. Noback, at which meeting Respondent was informed of the recommendation of the Council on Evaluation, her deficiencies were discussed with her and the Respondent was informed that she must show a marked and very substantial improvement in the areas of deficiencies. Respondent understood what the deficiencies were, but her reaction as in previous and subsequent discussions was to find fault with all those who made critical judgments about her performance (A. 148, 149, T. 391). At this same meeting Respondent was also informed that if she desired to appeal the decision of non-graduation that she could request a special set of oral and practical examinations by a group of physicians who had not been actively engaged in her education. All of these matters including a listing of the areas of deficiencies and her option to appeal the decision of non-graduation were advanced to Respondent in a written communication from the Dean of the School of Medicine under date of February 7, 1973 (A. 18, Stip. III 57, 58; A. 182 Def. Ex. No. 9). (A. 117, 124, 125, 130, 147-151; T. 208-209, 237-238, 299, 389-394).

The letter giving Respondent the notification provided, in part:

> ". . . and you must make very marked and very substantial improvement in several areas. These are: clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism.
>
> This means that these very substantial and marked improvements must take place and be satisfactory to the Council on Evaluation or you will not be able to continue in the Medical School after May of this year."

Respondent did by letter of February 9, 1973 elect to appeal the decision of non-graduation and requested the Dean of the School of Medicine to implement the appeals procedure by

having Respondent undergo oral and practical examinations by physicians who had not been actively engaged in her medical education (A. 19, Stip. III 59, A. 126, T. 239-242). Though the appeals mechanism was not spelled out word for word in the Academic Plan, the right of a student to appeal a decision had always been considered a part of the plan of the school (A. 85, 86, T. 80, 176) and the appeals mechanism as established was fair and impartial toward Respondent (A. 149-151, T. 392-394).

On March 15, 1973 by written communication the Dean of the School of Medicine established a method of Respondent's undergoing oral and practical examinations by seven experienced physicians none of whom had had appreciable contact with Respondent during her attendance at Medical School, all of whom were instructed to provide a careful detail and thorough assessment of Respondent's abilities to the Dean of the School of Medicine with a written evaluation of those abilities and a recommendation for future action (A. 208, Def. Ex. No. 22; A. 19, Stip. III 60, 61). The Dean met with the seven examining physicians prior to their examining Respondent (A. 19, Stip. III 62, 63) and advised the examiners that the school was interested in an objective, searching and fair evaluation of Respondent's competency (A. 73, 74, T. 50, 51).

Respondent did undergo oral and practical examination separately by each of the panel of seven experienced physicians, with each of the physicians providing the School of Medicine with their own report, evaluation and recommendation following the examination of Respondent (A. 19, Stip. III 64).

Only one of the seven examining physicians deemed Respondent qualified and competent to be graduated in June, 1973 with the M.D. degree (A. 196, Def. Ex. No. 18). The doctor recommending graduation however stated that he had not had an opportunity to observe Respondent taking a patient

history, doing a physical examination and carrying out the diagnosis on a patient since he had only examined her on the laboratory aspects as a pathologist, thus he had no opportunity to observe her clinical competency (T. 52, 53). One of the physicians recommended graduation in June, 1973 even though he deemed Respondent not qualified to graduate in June, 1973 with the M.D. degree (A. 190, Def. Ex. No. 15) and five physicians, each independent of the other, concluded that Respondent was not qualified to graduate with the M.D. degree in June, 1973 (A. 192, 195, 199, 201, 205, Def. Ex. No. 16, 17, 19, 20, 21; Newman Depos. pp. 6-12; A. 38-40, Memo and Order, Judge Jurgens, pages 15, 16, 17).

The Council on Evaluation of the School of Medicine following receipt of the reports and evaluations made by the seven experienced physicians affirmed its previous decision that Respondent was not qualified to graduate in June, 1973 (A. 20 Stip. III 66, 72; A. 162 T. 458); the Coordinating Committee of the School of Medicine on May 7, 1973 again sustained the action by the Council on Evaluation that Respondent not graduate in June, 1973 and Respondent was so notified by the Dean of the School of Medicine (A. 21, Stip. III 71, 74; A. 187, Def. Ex. No. 12; A. 164, 165, T. 460-461).

The Council on Evaluation of the School of Medicine met on May 14, 1973 and again on May 28, 1973 to review the academic performance of Respondent (exclusive of the evaluations by the seven physicians (A. 164, 165, T. 460-461) for the period of time from December, 1972 through the date of the meetings to determine whether Respondent had made radical improvements (as called for in earlier Council action) in the areas of deficiencies of which she had been previously informed. The Council on Evaluation unanimously recommended that Respondent be dropped from the University of Missouri-Kansas City School of Medicine (A. 166, T. 463; A. 21, Stip. III 73).

The Coordinating Committee of the School of Medicine met on June 4, 1973 to consider the recommendation of the Council on Evaluation that Respondent not be allowed to continue in the School of Medicine and the Coordinating Committee accepted the recommendation of the Council that Respondent be dropped as a student from the School of Medicine (A. 22, Stip. III 77).

Since Respondent had been on probation for in excess of one academic year, had received several notifications of deficiency in performance, repeated discussions and meetings with respect to her performance and repeated attempts to help her improve performance (A. 90, 108, 147, 155, T. 87, 148, 150, 152, 389, 401, 426), by letter of July 6, 1973, Respondent was notified by the Dean of the School of Medicine that he had accepted the recommendations of the Council on Evaluation and the Coordinating Committee and that Respondent was no longer a student of the School of Medicine (A. 22, Stip. III 78).

Respondent appealed the decision of dismissal to the Provost for Health Science. Following a review of all academic records and evaluations, the Provost sustained the action of the Council on Evaluation, the Coordinating Committee and the Dean. (A. 154, 155, T. 400-401).

At numerous times throughout her attendance at the Medical School, Respondent consulted with her Docent, Dr. William T. Sirridge, with respect to her performance in the Medical School, the reason for her being placed on probation and the reasons for which the Medical School deemed her performance to be deficient (A. 100, 101, 108, 109, 110, T. 108, 148, 150, 157). Respondent on numerous occasions appeared before, discussed and was heard in respect to her performance by the Dean of the School of Medicine, the Assistant Dean and Chairman of the Council on Evaluation and her Docent (A. 22, 23, Stip. III 80; A. 130, 132, 133, 146-148, T. 268, 299, 322, 386-389; A. 34 Memo. and Order, Judge Jurgens, pages 10, 11).

Respondent's Docent, Dr. William T. Sirrridge, counseled with, helped and assisted Respondent in an attempt to correct the areas of deficiencies in Respondent's overall performance (A. 90, 108-110, T. 87, 148, 150, 152, 155; A. 34 Memo. and Order, Judge Jurgens, pages 10 and 11). As her Docent, Dr. Sirridge had more contact with Respondent than any other teacher (A. 97, T. 101) and though he had earlier given a letter of recommendation because he thought she would correct the deficiencies (A. 105, T. 126), his opinion was that Respondent was not a safe physician and, therefore, not qualified to graduate (A. 109, 110, T. 151, 152). In his opinion she was not clinically competent (A. 108, T. 148) as she would not do the work, would not seek the opportunity to learn clinical skills, to diagnose patients, and she thought she could become a doctor just by reading a book (A. 108-110, T. 140, 148-152).

Petitioners did not make public nor reveal to any source outside its own Medical School officials the dismissal of Respondent or the reasons therefor as is evidenced by Petitioners refusal to discuss or provide any information as to dismissal or reasons therefore to the organization known as American Women in Science. (T. 66, 353-354).

The trial judge, Senior Judge Jurgens, after a two day trial of the case found against Respondent and in favor of Petitioners on all allegations advanced by Respondent. The Court found that Respondent not only was not denied procedural due process but that Petitioners went beyond the requirements of procedural due process by affording Respondent the opportunity to be examined by seven independent physicians in order to be absolutely certain that their grading of the Respondent in her medical skills were correct, finding that the evidence totally failed to show that any member of the faculty was prejudiced in any way against Respondent because of her sex, race, religion or appearance; finding that Respondent was aware of the requirements of graduation, including clinical competency and the

ability to function as a safe physician; finding that Respondent was aware of deficiencies in clinical performance and was counseled repeatedly in respect thereto and finding that the evidence totally failed to establish that Respondent was dismissed for any reason other than the quality of her work and that the dismissal was not a result of bad faith, arbitrary or capricious action on the part of Petitioners.

By opinion dated July 16, 1976 the United States Court of Appeals for the Eighth Circuit reversed outright the judgment of the trial court and found that the Fourteenth Amendment to the Constitution of the United States required a notice of charges and hearing before a medical student could be dismissed from medical school for academic performance deficiencies (A. 48).

Petitioners' request for a rehearing or hearing en banc was denied by a five to three vote of the United States Court of Appeals for the Eighth Circuit on September 2, 1976 with a written dissent being made a part of that order (A. 56).

The Supreme Court of the United States under date of April 18, 1977 granted a writ of certiorari as requested by Petitioners.

ARGUMENT

I

A Medical Student in a Public Institution of Higher Education Is Not Entitled, Pursuant to the Constitution of the United States and the Fourteenth Amendment, to a Notice of Charges and a Hearing Prior to Dismissal From Medical School for Deficient Academic Performance.

The Supreme Court is being asked to determine whether or not public universities, colleges, professional educators, the judiciary of state courts and federal courts have been mistaken for decades in not giving or requiring a specific notice of charges and a full due process hearing to a student prior to dismissing the student for deficient academic performance. This is a case of first impression with the Supreme Court.

The United States District Court for the Western District of Missouri, following a two day trial, held that a public institution of higher education is not legally required to give a medical student a notice of charges of deficiency and subsequent hearing thereon prior to dismissing the student for deficient academic performance. The court found that the institution had exceeded legal requirements of due process in the opportunities extended to the student. (A.-26)

The United States Court of Appeals for the Eighth Circuit reversed the lower court and in doing so became the first federal court to hold that the Fourteenth Amendment to the Constitution of the United States requires a public institution of higher education to give a medical student a written notice of charges and hearing before the decision-making body or bodies and accorded all other procedural due process prior to dismissing the student for deficiencies in academic performance. Presumably,

by stating all other procedural due process rights, the court means a hearing with all attributes of a trial, including such things as the right to counsel and the right to confront and cross-examine witnesses. (A.-48)

The Court of Appeals held that such a dismissal for deficient academic performance imposed a stigma upon the student and thus deprived the student of liberty within the meaning and intent of the due process clause of the Fourteenth Amendment to the Constitution of the United States. The court found that the dismissal stigmatized the individual in such a way that she will be unable to continue her medical education and her chances of returning to employment in a medically related field are severly damaged. The Court of Appeals placed total reliance for legal authority upon the decisions rendered by the Supreme Court in the cases of *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L.Ed.2d 548 (1972) and *Perry v. Sindermann*, 408 U.S. 593, 92 S. Ct. 2694, 33 L.Ed.2d 570 (1972) and its own decision in *Greenhill v. Bailey*, 519 F.2d 5 (8th Cir. 1975). The Eighth Circuit Court of Appeals opinion misconstrued the meaning and intent of the *Roth* and *Sindermann* opinions and failed to distinguish the *Greenhill* opinion.

Though the Supreme Court has never considered the precise question presented, the court has reached several decisions in recent years which indicate that a medical student at a public institution of higher education is not entitled to procedural due process prior to dismissal for deficient academic performance. These cases hold that an individual is entitled to procedural due process only when the individual is being deprived of an interest within the meaning and intent of the Fourteenth Amendment to the Constitution of the United States. This Court stated in *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-570, 92 S. Ct. 2701, 2705, 33 L.Ed.2d 548, 556-557 (1972):

"The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite."

In *Board of Regents v. Roth, supra,* the court acknowledged that while the Court had eschewed rigid or formalistic limitations on the protection of procedual due process, it has at the same time observed certain boundaries. Though the Court did not specifically define liberty, it did set forth those rights which are protected as liberty interests other than just freedom from bodily restraint. The Court in considering whether or not an untenured professor had been deprived of liberty by not having his employment contract renewed looked to determine whether or not the state had made a charge against the professor that would seriously damage his standing and association in his community, as for example by charging the professor with dishonesty or immorality, and found that no such charges had been made against the professor. In the case at bar there were absolutely no charges of dishonesty or immorality, the only so-called charge in respect to Respondent being that of deficient cademic performance. It is submitted that the guideline utilized in the *Roth* case, *supra,* of determining whether or not a "person's good name, reputation, honor or integrity is at stake because of what the government is doing to him" is the proper analysis to be utilized in determining if a medical student has a liberty interest protectable by the requirements of the Fourteenth Amendment to the United States Constitution.

It is submitted that dismissal from a medical school for the sole reason of deficient academic performance does not reflect upon a person's good name, reputation, honor or integrity any more than the non-renewal of a professor's contract of employment reflects upon the professor. Admittedly, the dismissal

will make the student somewhat less attractive to other medical schools, but it does not foreclose the student seeking admission to another school and gaining admission. It is further submitted that dismissal from medical school for deficient academic performance does not reflect upon the other liberty rights denoted in *Roth, supra,* those being the right of contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to one's own dictates and generally to enjoy those privileges long recognized as essential to the orderly pursuit of happiness by free men.

The Supreme Court in the recent case of *Bishop v. Wood,* 426 U.S. 341, 96 S. Ct. 2074, 48 L.Ed.2d 684 (1976) followed the *Roth, supra,* decision and held that a policeman who was fired, even if the firing was a mistake and based upon incorrect information, was not deprived of liberty within the meaning of the Fourteenth Amendment and was, therefore, not entitled to a notice of charges and a hearing since his good name, reputation, honor or integrity had not been infringed upon because there was no public disclosure of his discharge. In fact, in the case at bar, Petitioners refused to disclose to any source outside the Medical School officials such information.

As in the *Bishop* case, the Petitioners in the case at bar did not make a public disclosure to any individual, group, organization, or association, of the dismissal of Respondent from Medical School or the reasons therefor. It is submitted that a medical student, particularly where the trial judge had found that the sole reason for dismissal was deficient academic performance, (A.-44) does not have greater "liberty" rights than a public employee. The nature of a student's interest is certainly no greater than the nature of the interests of a public employee. If a public employee is not constitutionally entitled to refute a city manager's judgment at a hearing, then a medical student

should not be deemed entitled to the right to refute a medical school's academic judgment and evaluation at a hearing.

Just as the police officer is free to seek other employment, a medical student dismissed for deficient academic performance is free to seek admission to other educational institutions and is free to seek employment in medically related fields of endeavor.

If an individual does not have a protected liberty interest where public announcements have been made concerning the fact that the person is known to be active in the criminal field as a shoplifter, *Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L.Ed.2d 405 (1976), then by comparison a dismissal from a medical school for deficient academic performance (not revealed to the public) does not infringe upon one's good name, reputation, honor or integrity. Furthermore, a dismissal for deficient academic performance does not place upon the student a badge of infamy or disgrace, *Wisconsin v. Constantineau*, 400 U.S. 433, 91 S. Ct. 507, 27 L.Ed.2d 515 (1971).

The Eighth Circuit Court of Appeals in *Greenhill v. Bailey*, *supra*, found a deprivation of liberty, not because of dismissal for deficient academic performance, but because the school placed upon its permanent records an assertion that the student lacked the intellectual ability or was intellectually unfit to become a doctor and communicated that assertion to outside sources. In *Greenhill*, *supra*, at page 8 the Court said:

> "We hold that the action by the school in denigrating Greenhill's intellectual ability, *as distinguished from his performance*, deprived him of a significant interest in liberty, for it admittedly 'imposed on him a stigma or other disability that foreclose(s) his freedom to take advantage of other * * * opportunities.'" (Emphasis Added)

The case at bar is concerned solely with academic performance and neither the dismissal of Respondent nor the deficient academic performance was communicated nor revealed to any source outside the University of Missouri—Kansas City School of Medicine.

It is submitted that Respondent has not been deprived of 'liberty' and has not been stigmatized by dismissal from Medical School for deficient academic performance. There was absolutely no public disclosure of Respondent's dismissal and the reasons for the dismissal. The dismissal of a student solely for deficient academic performance does not challenge their good name, reputation, honor or integrity within the meaning of the *Roth*, *supra* and *Bishop*, *supra* decisions. Though the non-retention of a medical student in a medical school might make the student somewhat less attractive to another medical school or employment in a medically related field, this fact would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of liberty. *Board of Regents v. Roth*, *supra*.

A medical student at the University of Missouri-Kansas City does not have a property interest so as to be entitled to procedural due process prior to dismissal for deficient academic performance. The Supreme Court in *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L.Ed.2d 725 (1975), *Board of Regents v. Roth*, *supra*, *Bishop v. Wood*, *supra* and *Paul v. Davis*, *supra*, has stated that protected interests in property are not created by the United States Constitution, but are created and their dimensions are defined by an independent source such as state statutes or rules entitling the citizen to certain benefits. The Respondent does not have a right to a medical education in a public institution of higher education in the State of Missouri since the state has not extended that right to any individual by way of statute, regulations or otherwise. Further, the University of Missouri has not by regulation, rule or practice granted to Respondent or any other individual the right to a medical education. Most assuredly, the law of Missouri and the rules of the University require students to receive equal treatment, but pro-

vide no right to remain in school irrespective of academic performance and hold out no right to graduate and practice medicine. The case at bar is clearly distinguishable from *Goss v. Lopez, supra* not only because that case did not involve higher education; did not involve academic evaluation, but rather discipline for misconduct and more importantly because that case involved a state which extended the right to a secondary education by means of a compulsory attendance law and a free education.

Education is not a right protected by the United States Constitution, *San Antonio Ind. School District v. Rodriguez*, 411 U.S. 1, 93 S. Ct. 1278, 36 L.Ed.2d 16 (1973) although the importance of education to our democratic society is obvious to all. *Flemming v. Adams*, 377 F.2d 975 (10th Cir. 1967) cert. denied 389 U.S. 898, 88 S.Ct. 219, 19 L.Ed.2d 216 (1967). Since the Constitution of the United States, the laws of the State of Missouri and the rules and regulations of the University of Missouri do not give Respondent the legal right to a medical education, the right to receive the Medical Doctor degree or the right to practice medicine, the Respondent does not have a property interest subject to the protection of the Fourteenth Amendment. As stated in *Board of Regents v. Roth, supra*, 408 U.S. at 577, 92 S.Ct. at 2709, 33 L.Ed.2d at 561:

> "To have a property interest in a benefit, a person must clearly have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must have a legitimate claim of entitlement to it."

It is respectfully submitted that Respondent as a medical student at a public institution of higher education has not been deprived of liberty or property within the meaning and intent of the due process clause of the Fourteenth Amendment to the Constitution of the United States. To hold otherwise will mean a total change in the law as applied to public higher education.

It would present far reaching implications as to the relationship of students to institutions of higher education and their faculties who have heretofore not been interfered with by the judiciary in making academic performance evluations. The Chief Judge of the Eighth Circuit Court of Appeals in referring to the court's opinion in the case at bar stated:

> "My main concern with this decision is that it impermissively injects the courts into the academic environment of colleges and professional schools to an unacceptable degree. Educational institutions are much more qualified and better positioned to promulgate and enforce procedures which regulate academic performance. Dismissals due to academic deficiencies are not uncommon and schools may be expected to review the files of a number of students during the course of an academic year to determine whether expulsion is warranted. The present case seems to require the schools to give all such students formal notification of their deficiencies and an opportunity to respond before dismissal, regardless of how egregious the deficiency might be. Such a rule is likely to foment future litigation and subject educational institutions to unnecessary monitoring and to possible monetary judgments. This decision is not, in my opinion, in accord with existing principles of constitutional law and fails to give sufficient deference to the perspective and unique position of school administrators." (A.-56, 57)

Throughout the history of this nation the courts have refrained from interfering with the authority vested in school officials to dismiss a student for failure to attain or maintain prescribed academic performance and the courts have intervened only where it has been shown that school authorities acted arbitrarily, capriciously, or without basis in fact. *Connelly v. University of Vermont and State Agriculture College*, 244 F. Supp. 156 (D. Vt. 1965); *Keys v. Sawyer*, 353 F. Supp. 936 (S.D.

Tex. 1973); *Depperman v. University of Kentucky*, 371 F. Supp. 73 (E.D. Ky. 1974); *Gaspar v. Bruton*, 513 F.2d 843 (10th Cir. 1975); *Greenhill v. Bailey*, 378 F. Supp. 632 (S.D. Iowa 1974) (rev'd on sep. grounds, *supra*); *Mahavongsanan v. Hall*, 529 F.2d 448 (5th Cir. 1976); *Militana v. U. of Miami*, Fla. App. 1970, 236 S.2d 162, cert. denied 1971, 401 U.S. 962, 91 S. Ct. 970, 28 L.Ed.2d 245; *Mustell v. Rose*, 211 S.2d 489 (Ala. 1968), cert. denied 1968, 393 U.S. 936, 89 S. Ct. 297, 21 L.Ed.2d 272. As pointed out by this court in the case of *Goss v. Lopez*, 419 U.S. 565, 578, 95 S. Ct. 729, 738, 42 L.Ed.2d 725, 737, quoting from the case of *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S. Ct. 266, 270, 21 L.Ed.2d 228, 234 (1968): "Judicial interposition in the operation of the public school system of the nation raises problems requiring care and restraint . . . By and large, public education in our Nation is committed to the control of state and local authorities."

In the case at bar the findings of the Federal District Court clearly answered any question of whether or not Respondent's dismissal from Medical School was arbitrary, capricious or without basis in fact by the court stating:

> "The Court finds that defendants acted properly in evaluating plaintiff's academic performance and in denying graduation and in dismissing plaintiff from medical school, since the evidence *overwhelmingly* showed plaintiff was not capable of performing as a medical doctor." (A. 46, p. 24, emphasis added) and
>
> "The evidence presented in the case totally failed to establish that plaintiff was expelled for any reason other than the quality of her work." (A. 44, p. 22)

Thus the case at bar does not fall into any previously recognized legal exception to the above-referred to general rule of court non-intervention.

Procedural due process is required before a student can be dismissed for misconduct. *Goss v. Lopez, supra; Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961); denied 368 U.S. 930, 82 S. Ct. 368, 7 L.Ed.2d 193; *Esteban v. Central Missouri State College*, 277 F. Supp. 649 (W.D. Mo. 1967). However, the dismissal in the present case was for deficient academic performance of which Respondent had ample prior notice and was not for student misconduct. *Greenhill v. Bailey, supra; Gaspar v. Bruton, supra.* As stated in *Mahavongsanan v. Hall, supra*, at 450:

> "Misconduct and failure to attain a standard of scholarship cannot be equated. A hearing may be required to determine charges of misconduct, but a hearing may be useless or harmful in finding out the truth concerning scholarship. There is a clear dichotomy between a student's due process rights in disciplinary dismissals and in academic dismissals." (cites omitted)

Where the dismissal of a medical student, or for that matter any student in a public institution of higher education, is for failure to meet standards of academic performance, it is clear that a notice of charges and a hearing are not and should not be required. *Brookins v. Bonnell*, 362 F. Supp. 379 (E.D. Pa. 1973); *Connelly, supra; Keys, supra; Depperman, supra; Mahavongsanan, supra; Greenhill, supra; Militana v. U. of Miami*, Fla. App. 1970, 236 S.2d 162, cert. denied 1971, 401 U.S. 962, 91 S. Ct. 970, 28 L.Ed.2d 245; *Mustell v. Rose*, 211 S.2d 489 (Ala. 1968), cert. denied 1968, 393 U.S. 936, 89 S. Ct. 297, 21 L.Ed.2d 272. The reasoning for such judicial non-intervention was stated in *Connelly, supra*, at p. 160 as follows:

> "The reason for this rule is that in matters of scholarship, the school authorities are uniquely qualified by training and experience to judge the qualifications of a student, and the efficiency of instruction depends in no small degree

upon the school faculty's freedom from interference from other non-educational tribunals."

and in speaking of medical students the *Connelly*, *supra*, court stated at p. 160:

"The rule of judicial nonintervention in scholastic affairs is particularly applicable in the case of a medical school. A medical school must be the judge of the qualifications of its students to be granted a degree; Courts are not supposed to be learned in medicine and are not qualified to pass opinion as to the attainments of a student in medicine."

The Eighth Circuit Court of Appeals in *Greenhill*, *supra*, at 9, in holding that a medical school was not required to have a hearing on a student's academic performance or evaluation, stated:

"A graduate or professional school is, after all, the best judge of its student's academic performance and their ability to master the required curriculum."

It is respectfully submitted that the reasoning in the aforementioned cases is indeed proper and correct. To require public institutions to give a notice of charges and a hearing before a student is dismissed for academic performance will require a total reversal of the long history of judicial non-intervention and must of necessity mean that the courts will in the future be the final judge of the qualifications of students to be granted degrees, because if the Fourteenth Amendment requires such action by the public institutions it must also require a review on the merits by the judicial system. The Federal District Court summed up such a state of affairs in *Keys*, *supra*, at page 939 as follows:

"Such an inquiry would necessarily entail the complete substitution of a court evaluation of a complainant's level of achievement in the subject under review, and the standard by which such achievement should be measured, for

that of the professor. It would be difficult to prove by reason, logic or common sense that the federal judiciary is either competent, or more competent, to make such an assessment."

II

Even If Respondent Be Found to Be Entitled to Procedural Due Process Prior to Dismissal for Deficient Academic Performance, Respondent Received Such Procedural Due Process as Is Required in the Academic Determination of Qualifications by a Medical School.

Procedural due process pursuant to the Fourteenth Amendment to the United States Constitution is not an inflexible set of rules that must be applied to every fact situation that comes along, but the precise dictates of due process in a given factual situation are controlled by a consideration of the governmental function and the private interests affected. *Goss v. Lopez*, *supra*; *Greenhill v. Bailey*, *supra*. A key consideration is that of whether or not the individual was treated with fairness.

It has previously been pointed out that the Respondent as a medical student did not have a legally protectable interest of liberty or property under the Fourteenth Amendment to the United States Constitution. The governmental function which is under consideration in the case at bar is that of educating future medical doctors of this nation and the awesome responsibility to the general public of graduating only those individuals who are safe and competent physicians. When an individual is graduated from a public institution of higher education with the degree of Doctor of Medicine the institution is holding out to the public that this individual is a qualified safe and competent physician and the general public of this nation places reliance upon the representation of the institution. It is, therefore, sub-

mitted that even if one assumes that the nature of a medical student's interest is such as to require some degree of procedural due process, a weighing of the governmental interest and that of the medical student in the case at bar will show that the numerous prior notices of deficient academic performance received by Respondent and the numerous meetings Respondent had with medical school officials and faculty to discuss such deficiencies was fair to the student and complied with requirements of procedural due process.

Even though Petitioners contend that they were not required to provide Respondent with a notice of charges and a hearing, a review of the facts in the case at bar reveals the fair and reasonable manner in which Respondent was treated and reveals the reasons for the District Judge finding that the Medical School went well beyond any requirements of procedural due process.

Respondent was notified in March, 1972, after having initially enrolled in September, 1971, that her academic performance in pediatrics was deficient and was warned that the areas of deficiencies included rapport with patients and her expertise in coming to the fundamentals of a clinical problem, that her attendance was erratic in the pediatric clinic and that physicians were disturbed because of Respondent's lack of personal hygiene (A. 12, Stip. III, 34; A. 100, 101, 123, 160; T. 229, 107-108, 454). Respondent obviously ignored the warning of deficiencies, because she didn't consider the same to have any merit whatsoever (T. 265-267). After a complete review by the Council on Evaluation of the academic performance of Respondent, the Respondent was notified both orally and in writing on July 5, 1972, that she was being placed on probation and that her academic performance was deficient in keeping to established schedules, meeting all clinical responsibilities on time and gracefully, attending carefully to personal appearance including handwashing and grooming, participating appropriately in activities of the school and directing criticisms and suggestions maturely to her

Docent and to the faculty member in charge of the curriculum block as she might have such criticisms and suggestions (A. 15, 16, Stip. III, 45; A. 117, 124, 146, T. 235, 208, 209, 386, 387, A. 180, Def. Ex. No. 8). Respondent undoubtedly understood what the deficiencies in her performance were, because the Dean in conference with her not only explained each item once, but explained them twice (A. 146-147, T. 386-387, 268-271). The Dean then had another meeting with Respondent in October, 1972, to again review her probationary status and need for improvement and sought ways to offer her additional assistance (A. 117, 146-148, 208, 209, T. 387-389). The Council on Evaluation of the School of Medicine in December, 1972 after reviewing Respondent's academic performance voted unanimously to recommend as follows:

> "The Council on Evaluation recommends that this student be continued on probation and not be considered as a candidate for the M.D. degree in June, 1973. The student may choose to remain at UMKC School of Medicine until June 1, 1973 but may not continue beyond that date unless there is radical improvement in the following areas: clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism." (A. 17, Stip. III 54).

This recommendation was approved by the Coordinating Committee of the School of Medicine and again Respondent's deficiencies were discussed with her by her Docent, the Chairman of the Council on Evaluation and the Dean of the School of Medicine and she was again informed in writing of the specific deficiencies (A. 18, Stip. III, 57, 58; A. 182, Def. Ex. No. 9, A. 117, 124, 130, 147, T. 208, 209, 237, 238, 299, 389-392). At this time, when Respondent was advised of the deficiencies in academic performance, she was also advised that the School would establish an appeals procedure whereby she could elect to appeal the decision of non-graduation.

Respondent elected to appeal the decision that she would not graduate (A. 19, Stip. III, 59) and the School established a panel of seven experienced physicians to conduct an oral and practical examination of Respondent's abilities, the physicians being individuals who had not been actively engaged in Respondent's medical education (A. 208, Def. Ex. No. 22; A. 19, Stip. III, 60-63). The appeal mechanism established by the Dean was fair to Respondent and was certainly an opportunity for Respondent to demonstrate her abilities for the impartial judgment and opinion of individuals outside the Medical School. What better hearing on qualification is there than the opportunity for a student to display his or her medical skills and competency than carrying out clinically oriented performances with patients before impartial, qualified, practicing physicians? The mechanism of seven one-half day performance evaluations is quite similar to that used in the medical profession for American Board Certification (A. 114, 115, T. 204). The result of the written evaluations of the seven physicians showed that only one of the seven physicians felt Respondent was qualified to graduate in June of 1973 (A. 190-207, Def. Ex. Nos. 15 through 21). Even this doctor, a pathologist, readily admitted, however, that he did not have the opportunity to observe Respondent in a clinical setting with a patient so as to be able to render an opinion on clinical competency (T. 52, 53). One of the remaining six physicians recommended graduation even though he deemed Respondent not qualified for internship (A. 190, Def. Ex. No. 15). The remaining five physicians concluded that Respondent was not qualified to graduate with the M.D. degree in June, 1973. (A. 192-207, Def. Ex. Nos. 16, 17, 19, 20, 21; A. 38-40, Memo. and Order, Judge Jurgens, p. 15, 16, 17).

Following receipt of the advisory evaluations from the seven physicians the Council on Evaluation and the Coordinating Committee of the School of Medicine again reviewed and sustained their actions that Respondent not graduate in June of

1973 and Respondent was no notified. (A. 21, Stip. III, 66, 71, 72, 74; A. 187, Def. Ex. No. 12; A. 164, 165, T. 460-461).

Respondent was obviously not qualified to be graduated with the M.D. degree. The Council on Evaluation stated she was not qualified to graduate; the Coordinating Committee said she was not qualified to graduate; the Dean said she was not qualified to graduate; the Assistant Dean and Chairman of the Council on Evaluation said she was not qualified to graduate; six out of the seven independent examining doctors on the appeal panel said she was not qualified to graduate; Respondent's own supervising professor, her Docent, said she was not a safe physician and not qualified to graduate; a female member of the Coordinating Committee that Respondent called as a witness (Dr. Marjorie Sirridge) said Respondent was not a safe physician and not qualified to graduate (A. 91, 92, T. 90); and finally Respondent herself admitted that she lacked some of the required clinical skills (T. 329) and thus had not met the qualifications for graduation. Respondent's expert witnesses could not render an opinion on her qualifications because they had never examined Respondent and knew nothing of her clinical competency (T. 358).

The Council on Evaluation of the School of Medicine, in May, 1973, pursuant to its action in December, 1972 and the notice that Respondent received at that time, again reviewed the academic performance of Respondent for the period of time from December, 1972 through May, 1973 to determine if Respondent had made improvements in the areas of deficiencies which was a reasonable condition for her continuing in School. After review of Respondent's academic performance for the period of December, 1972 through May, 1973 the Council on Evaluation unanimously recommended that Respondent be dropped from the School of Medicine, which recommendation was reviewed and approved by the Coordinating Committee. (A. 21, 22, Stip. III, 73, 77; A. 155, 162, 166, T. 401, 458, 463). The Dean of the School of Medicine accepted the recommenda-

tion of the two review bodies and dropped Respondent as a student by written communication of July 6, 1973. The Respondent appealed the decision to the Provost for Health Sciences of the University of Missouri-Kansas City, who after a complete review of Respondent's record, affirmed the decision of dismissal (A. 154, 155, T. 400-401).

At numerous times throughout her attendance at Medical School, Respondent consulted with her Docent in respect to her performance in the Medical School, the reasons for her being placed on probation and the reason that the School deemed her performance to be academically deficient (A. 90, 100, 101, 108, 109, 110, 147; T. 87, 108, 148, 150, 157, 389). On numerous occasions Respondent appeared before and discussed with the Dean of the School of Medicine and the Assistant Dean the nature of her deficiencies and the improvements which would be necessary (A. 22, 23, Stip. III 80; A. 130, 132, 133, 146-148, T. 268, 299, 322, 386-389; A. 34 Memo. and Order, Judge Jurgens, p. 10 and 11). Respondent was helped and assisted throughout the period of time in an attempt to correct the areas of deficiencies in her overall academic performance (A. 90, 108, 109, 110, 147; T. 87, 148, 150, 152, 155, 389).

It is submitted that the foregoing conclusively establishes that the Respondent was treated fairly by the Medical School. It is not and cannot be refuted that Respondent was advised and counseled about her performance deficiencies for over a period of one year before the separate decisions of nongraduation and dismissal were made by the School.

Prior to the decision by the Eighth Circuit Court of Appeals in the case at bar, the most far reaching decision in the federal courts on the issue of procedural due process being required prior to the dismissal of a student for deficiency in academic performance was the case of *Gaspar v. Bruton, supra*, where the court held at page 851:

> "We hold that school authorities, in order to satisfy Due Process prior to termination or suspension of a student for

> deficiencies in meeting minimum academic performance need only advise that student with respect to such deficiencies in any form. All that is required is that the student be made aware prior to termination of his failure or impending failure to meet those standards."

Clearly under the law, the Medical School complied with these Due Process requirements.

It cannot be questioned that Respondent was advised of her deficient Medical School performance as early as March, 1972 and as previously pointed out in this brief was advised and counseled on her deficient performance on enumerable occasions. The trial court found that Respondent's Docent (supervising faculty member) went to great lengths and extremes in his efforts to assist the Respondent in every phase of her education, repeatedly calling to her attention deficiencies noted by the school authorities. Obviously, such continued deficient performance could lead only to the regretable conclusion of non-graduation and dismissal. Respondent knew that such performance could lead to dismissal (A. 127, 130, T. 244, 299) because the Dean in his letter to Respondent of February 7, 1973, when he advised her of the fact that she would not graduate in May stated "This means that these very substantial and marked improvements must take place and be satisfactory to the Council on Evaluation or you will not be able to continue in the Medical School after May of this year." (A. 182, Def. Ex. No. 9).

In addition to the numerous notices of deficient academic performance, Respondent received several hearings throughout her time at the Medical School, though informal they may have been. As previously pointed out she met on numerous occasions with Medical School officials and faculty to discuss the deficiencies in academic performance. It has been previously held by the Eighth Circuit Court of Appeals that such "informal give-and-take" meetings satisfy requirements of procedural due process, *Greenhill v. Bailey, supra* at page 9, citing as authority

Goss v. Lopez, supra, where school officials are making an academic review rather than serving as a fact-finding body in disciplinary expulsions.

As stated in *Dixon v. Alabama State Board of Education,* 294 F.2d 150, 158 (5th Cir. 1961), *cert. denied,* 368 U.S. 930, 82 S. Ct. 368, 7 L.Ed.2d 193 (1961):

> "By its nature, a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses."

It is again pointed out that Petitioners did not make public nor reveal to any source outside its own Medical School officials the dismissal of Respondent or the reasons therefore as is evidenced by Petitioners refusal to discuss or provide any information as to dismissal or reasons therefore to the organization known as American Women in Science. (T. 66, 353-354).

The Chief Judge of the Eighth Circuit Court of Appeals, joined by two other judges, in his written dissent to the Order denying a rehearing stated:

> "Even if due process rights were involved in this case, I believe Horowitz received all the process that was called for under the circumstances. She was informed several times of her inadequacies in the clinical program. She was counseled by the Dean and faculty members. She submitted to a series of oral and practical examinations before a panel of seven doctors and only two doctors were of the opinion that she was qualified to graduate on schedule. Her deficiencies remained uncorrected and she was dismissed from school. Horowitz clearly was given sufficient notice of her weaknesses and she was informed that dismissal might result if corrective measures were not successfully pursued. This notice and the opportunity over the course of a year to correct her deficiencies were sufficient for due process purposes." (A.-58)

The School of Medicine had the absolute discretion and authority to determine whether or not the Respondent should be continued in Medical School beyond her normally expected date of graduation. *Keys v. Sawyer, supra; Greenhill v. Bailey, supra; Connelly v. University of Vermont, supra.* The decision of the School of Medicine to drop the Respondent as a student was not arbitrary and capricious and was not made in bad faith. The School had ample basis upon which to reach such a decision since Respondent had been warned of academic performance deficiencies, particularly in the area of clinical competence, for a period beginning in March of 1972 and continuing through May of 1973 at which time she was dropped from School. The question of how long a school retains a medical student is one which the courts leave to professional medical educators. The trial court correctly found that the dismissal of Respondent was because of the quality of her work and for no other reason.

Respondent not only was afforded due process by Petitioners, but Respondent further had the benefit of a full trial in the Federal District Court for the Western District of Missouri wherein all issues of procedural due process and substantive due process, including numerous allegations of sex, religious and ethnic discrimination and unfair academic performance evaluations were totally explored. Respondent had the opportunity at trial and challenged the academic performance evaluations and decisions of the School of Medicine, but the trial court found that petitioners acted properly in evaluating Respondent's academic performance and in denying graduation and in dismissing Respondent from Medical School, since the evidence overwhelmingly showed Respondent was not capable of performing as a medical doctor (A. 46, Memo. and Order, Judge Jurgens, page 24). Surely a trial in a Federal Court satisfies requirements of due process in the case at bar.

CONCLUSION

A student, in attendance at a public institution of higher education school of medicine whose academic performance is deemed unsatisfactory, is not constitutionally entitled to a notice of charges and a hearing prior to dismissal for deficient academic performance.

The facts of the case at bar clearly establish that even though not constitutionally required, the Petitioners did in fact and law extend to the student procedural due process by giving numerous notices of deficiencies and through the numerous conferences and meetings with the student by medical school officials and faculty about the deficiencies.

It is respectfully requested that the judgment and opinion of the Eighth Circuit Court of Appeals in the case at bar be reversed and that the judgment and opinion of the Federal District Court for the Western District of Missouri be ordered affirmed in its entirety.

Respectfully submitted,

JACKSON A. WRIGHT
MARVIN E. WRIGHT
JAMES S. NEWBERRY
TED D. AYRES
227 University Hall
Columbia, Missouri 65201
314-882-3211

FRED WILKINS
SHUGHART, THOMSON & KILROY
9th Floor
Commerce Bank Building
Kansas City, Missouri 64106

Attorneys for Petitioners

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OCTOBER TERM, 1976

No. 76-695

BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI; MEMBERS OF THE BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI, Individually and in Their Official Capacities, et al.,

Petitioners,

vs.

CHARLOTTE HOROWITZ,

Respondent.

BRIEF FOR RESPONDENT

ARTHUR A. BENSON II
2525 Commerce Tower
911 Main Street
Kansas City, Missouri 64105
Attorney for Respondent

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

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Petitioners,

vs.

CHARLOTTE HOROWITZ,

Respondent.

BRIEF FOR RESPONDENT

STATEMENT OF THE CASE

Charlotte Horowitz, the Respondent, was admitted to the Medical School of the University of Missouri-Kansas City with an outstanding record of scholastic accomplishments, achieved a brilliant academic success at the Medical School, and was dismissed from the School just weeks before her class was to graduate.

Horowitz was admitted to the Medical School in the Fall of 1971 as an advanced standing student (App. 10, Stips. 22-24) in part because of her outstanding scholastic credentials, including a Bachelor's degree in Chemistry

from Barnard College, a Master's degree in Psychology from Columbia University, and graduate work at Duke University and the National Institutes of Health, where she had a 3.8 grade point average on a 4.0 scale. (App. 6-7, Stips. 8 and 10) The scores of Horowitz on the Graduate Record Exam all exceeded the ninety-ninth percentile (App. 7, Stip. 9) and her scores on the Medical College Admissions Test were also outstanding. (App. 7, Stip. 12)

These academic achievements were supported by recommendations from people who were familiar and impressed with her work. The Chief of the Unit on Analytical Biochemistry of the National Institute of Mental Health described Horowitz as ". . . one of the most gifted persons, postdoctoral or nondoctoral, on the NIH campus . . . . she is capable of functioning on a par with some of the best NIH scientist-physicians." (App. 8-9, Stip. 18) Horowitz was also described as "extraordinarily intelligent and diligent" and as having "great drive and initiative." (App. 9, Stip. 19)

Upon entering U.M.K.C., Horowitz took the National Board Mini-Test, scoring first in the school in basic science and second in clinical studies. (App. 11, Stip. 27) She also took the Minnesota Multiphasic Personality Inventory, a psychological test which measures, among other factors, mental maturity and emotional stability. Horowitz tested within the normal range for all clinical test categories. (App. 11, Stip. 28)

Studies at the Medical School were divided into rotations, the docent unit being Horowitz's first rotation from September, 1971 through November, 1971. (App. 11, Stip. 29) The docent rotation at U.M.K.C. Medical School is the primary educational block of the curriculum where each student has frequent and close contact, within a small group of students, with a faculty member, the docent.

The docent maintains this close relationship with the same small group of students throughout their years of instruction.

During her first year at the Medical School, approximately equivalent to the third year in a traditional four-year school, Horowitz received credit for all six (6) rotations. Dr. William Sirridge, who as Horowitz's docent oversaw and directed her education (App. 97, Tr. 101), recommended her for advanced standing as a year VI student in a letter and evaluation report of June 9, 1972 finding her above average in all respects. (App. 14-15, Stips. 42, 43; P.Ex. 32, Tr. 136)

In June, 1972 a series of meetings began which culminated in Horowitz being placed on probation. She was neither informed of, invited, nor permitted to attend any of the meetings of the Council on Evaluation or of the Coordinating Committee, which were evaluating her performance, nor was she allowed to submit any documents or arguments in writing on her own behalf. (App. 124, 116, Tr. 236, 202, 206) As a result of this evaluation procedure, Horowitz was sent two letters on July 5, 1972 from Dean Noback. The first was a memorandum listing the class designations for advanced standing students noting that Horowitz had been elevated to year VI, the most advanced of the student classifications, representing the final year of medical school. (P.Ex. 35, Tr. 18)

The second letter to Horowitz reiterated the substance of a prior conference at which she was informed that she was being placed on probation, but was advanced pursuant to schedule. (P.Ex. 36, Tr. 18) Dean Noback gave the following reasons for placing Horowitz on probation:

> "Your acquisition of information is good. Your relationship with others has not been good and represents

> a major deficiency. You need to improve your relationship with others rapidly and substantially. This involves: Keeping to established schedules; meeting all clinical responsibilities on time and gracefully; attending carefully to personal appearance including hand washing and grooming; participating appropriately in the activities of the School; and directing criticism and suggestions maturely to your Docent and to the faculty member who is in charge of a curriculum block as you may have criticisms and suggestions."

(P.Ex. 36, Tr. 18) No mention was made of the clinical competence of Horowitz.

Shortly after these letters her docent, Dr. William Sirridge, wrote a letter of recommendation dated August 10, 1972 indicating that Horowitz had the highest class standing. (P.Ex. 39, Tr. 18) In another letter of recommendation dated August 17, 1972, written to Menninger Clinic at the request of Horowitz in respect to her application seeking admission into the clinic's residency program in psychiatry, Dr. Sirridge said he had no hesitancy in recommending her for a straight internship in psychiatry. (P.Ex. 40, Tr. 18)

The following Fall, 1972, Horowitz ranked first on her National Board Examination Part I. (App. 17, Stip. 51) During that Fall Horowitz was in her docent unit rotation and was evaluated for the first time by her docent as having unsatisfactory clinical skills but was highly satisfactory and superior in all other categories. (App. 17, Stip. 50; P.Ex. 95, Tr. 18) She received credit for the rotation (App. 17, Stip. 49) and for all rotations taken during the Fall and Winter of 1972.

During her obstretrics/gynecology rotation, for which she also received credit, she was informed, on January

26, 1973, that the Council on Evaluation had recommended that she not graduate in May of 1973. (App. 18, Stip. 57) Further, on February 7, 1973, she was informed in writing that the Coordinating Committee had met and accepted the recommendation of the Council on Evaluation that she not graduate. (App. 18, Stip. 58; P.Ex. 53, Tr. 18) She was informed that if she was dissatisfied with this decision, she could take a set of oral and practical examinations. This letter stated that Horowitz must make "very marked and very substantial improvement" in the areas of "clinical competence, peer and patient relations, personal hygiene and ability to accept criticism."

By letter of February 9, 1973, Horowitz elected to exercise the option of practical exams. (App. 19, Stip. 59) After procedures were created for the practical exams, none having existed before this date, Horowitz was notified on March 15, 1973 that she was to be examined by seven physicians who had been instructed to "provide a careful, detailed and thorough assessment of (her) abilities . . ." (App. 19, Stip. 60; P.Ex. 57, Tr. 18) That same day the seven doctors were sent letters explaining the process by which Horowitz would be examined (P.Ex. 58, Tr. 18; D.Ex. 22, App. 208) and Dean Noback prepared a memorandum which described the method of tallying the results of the seven physicians' examination. (P.Ex. 59, Tr. 189) As the Court of Appeals found: "The Dean informed the seven physicians by letter and a meeting that they were to make one of three recommendations: a) graduation on schedule; b) continued probation and reassessment of her status in May, 1973; c) dismissal from the medical school." 538 F.2d at 1320. (App. 52)

The seven doctors each sent letters regarding their evaluations of her. (P.Ex. 60, 61, 63, 64, 65, 66, 68, Tr. 35, 202) Although the letters of the doctors do not easily

fit into categories, it is evident that four of the seven doctors recommended that Horowitz either be allowed to graduate or remain in school on probation. These evaluations and recommendations did not follow the categories of recommendations specifically set out in Dean Noback's letter to the doctors (App. 73, Tr. 47-48; P.Ex. 59, Tr. 189) nor were the evaluations tallied pursuant to Dean Noback's tallying procedure. (App. 73, Tr. 47-48; P.Ex. 59, Tr. 189) The procedure for tallying the results of the recommendations (P.Ex. 59, Tr. 189) required the Dean to call the seven examining physicians together to discuss their evaluations and to resolve differences of opinion, if there was no clear majority evident from their letters. As the Court of Appeals found: "Although there was no clear majority opinion the panel was not called together as the procedures contemplated." 538 F.2d at 1320. (App. 52)

During the Spring of 1973 Horowitz continued to receive credit for her rotations, obstetrics/gynecology and surgery. (App. 20, Stip. 68; P.Ex. 83, Tr. 183) Quarterly exams were given in May, 1973 on which Horowitz ranked second in her class in total score and first or second in her class on fourteen of the thirty testing categories. (App. 25-26, Stip. 94)

The Council on Evaluation met May 1, 1973 and voted that Horowitz would not graduate in May, 1973. (App. 20, Stip. 66; P.Ex. 67, Tr. 18) The Coordinating Committee on May 7, 1973 voted to sustain the Council's recommendation that she not be allowed to graduate. (App. 21, Stip. 71; P.Ex. 69, Tr. 18) Following the decision of the Coordinating Committee on May 7, 1973, Dr. Sirridge, Dr. Smull and Dr. Noback met with Horowitz to tell her that both the Council on Evaluation and the Coordinating Committee had met and decided that her appeal to graduate would

be denied and she would not graduate at that time. No mention was made of dismissal. This meeting was confirmed by two letters dated May 11, 1973. Next the Council on Evaluation met on May 14, 1973 without notice to Horowitz (App. 17, Stips. 52, 53) and recommended that Horowitz not be allowed to re-enroll barring receipt of reports that she had improved radically. (App. 21, Stip. 72) On May 18, 1973 Dean Noback sent another letter to Horowitz reiterating their discussion of May 7, 1973 and informing her that the Council on Evaluation would be meeting at some time to consider the extent to which she had improved. (P.Ex. 71, Tr. 18) No mention was made of the possibility that Horowitz might be dismissed from the Medical School.

On May 28, 1973, the Council on Evaluation without any notice to Horowitz (App. 17, Stips. 52, 53) voted to dismiss Horowitz from the Medical School. (App. 21, Stip. 73; P.Ex. 77, Tr. 18) On June 4, 1973 the Coordinating Committee accepted the recommendation of dismissal (App. 22, Stip. 77; P.Ex. 78, Tr. 18), which was in turn upheld by Dean Noback. On July 6, 1973 Dean Noback formally informed Horowitz that she had been dismissed from the University of Missouri at Kansas City School of Medicine. (App. 22, Stip. 78, P.Ex. 96, Tr. 18)

Horowitz was dismissed from the Medical School for having allegedly failed to make adequate progress with regard to four areas, one arguably academic and three behavioral. In a letter from Dr. Smull to Dr. Noback (P.Ex. 49, Tr. 211) the alleged deficiencies of Horowitz were listed as clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism. Although Horowitz has consistently denied these behavioral charges and although Dr. Dennis in his deposition stated that the allegations were of questionable validity,

Horowitz has never been given an opportunity to appear at a hearing and rebut them. (App. 17, Stips. 52, 53) In this regard, Dr. Marjorie Sirridge, a member of the Coordinating Committee which finally made the recommendation that Horowitz be dismissed, stated for the minutes of the meeting on June 4, 1973 (P.Ex. 78, Tr. 18) that she believed Horowitz, from the beginning date of her medical education, had been the victim of prejudice by faculty, staff and examiners, and she testified that because Horowitz was a woman she had been held to higher standards than other students. (App. 81-84, Tr. 69-77) Dr. Sirridge also testified that Horowitz, because of her physical appearance (See photographs, P.Ex. 111-113, Tr. 30), was disadvantaged (App. 83, Tr. 74) and that because of her speech impediment or heavy accent (App. 83, Tr. 73) failed to meet the customary stereotype of female medical students and was thus held to higher standards of performance at the Medical School. (App. 82, Tr. 69) At none of the several meetings of the Council on Evaluation or the Coordinating Committee was Horowitz permitted to defend herself and rebut these allegations.

At no time prior to the filing of this lawsuit was Horowitz allowed to see the evaluations of her performance during any course rotations (App. 102, 111, 123, Tr. 187, 320) nor was she allowed to see or review the doctors' reports made during her rotation. (App. 14, Stip. 40; App. 102, Tr. 112; App. 123, Tr. 230, 320) She never was allowed to appear before any session of the Council on Evaluation or the Coordinating Committee on her own behalf (App. 17, Stips. 52, 53; App. 19-20, Stip. 65; App. 120-121, Tr. 216-217; Tr. 64, 82, 91, 121, 466) nor was she ever informed prior to a meeting when these committees would be considering her status. Her docent, Dr. William Sirridge, was her only contact with her course evaluations. She discussed with him his docent recommendations but she never actually saw them. She assumed they were substantially the same as he discussed with her. (App. 14-15, Stips. 42-44) Dr. Sirridge never told Horowitz that her deficiencies were serious enough to result in her being put on probation, not graduating on time, or being dismissed from school. Dr. Sirridge, as her docent, recommended to the Council on Evaluation that Horowitz be graduated (App. 107, Tr. 144) but she was, instead, dismissed.

Prior to her dismissal, as the Court of Appeals found: "Horowitz was never given a chance to appear before the Council on Evaluation, the Coordinating Committee or the Dean, for a hearing during the dismissal procedure, nor was she informed of the time or place of any of their meetings. Neither was she given copies of the formal evaluations or other evidence which the Council and the Committee considered." 538 F.2d at 1320. (App. 53)

Subsequent to her dismissal from medical school, Horowitz was unable to accept the employment that had been offered her by the University of North Carolina School of Medicine because that employment was conditional upon her receiving her medical degree. (App. 16, Stip. 47) It is likely that Horowitz, who presently is unemployed and is taking graduate courses in a non-degree program in the Washington, D.C. area, will never be able to find employment in medicine or a medically related field nor will she ever be able to gain entrance to another medical school. The testimony of Dr. Hilliard Cohen that Horowitz had been stigmatized by her dismissal, that her dismissal was a "significant black mark" against her name, that she would have great difficulty finding employment or obtaining admission to a medical school was uncontroverted at the trial. (App. 61-62, Tr. 25-26) As the Court of Appeals held: "The unrefuted evidence here establishes

that Horowitz has been stigmatized by her dismissal in such a way that she will be unable to continue her medical education, and her chances of returning to employment in a medically related field are severely damaged." 538 F.2d at 1321. (App. 55) U.M.K.C., as do nearly all medical schools, requires applicants to explain fully the reasons for being required to leave any prior institution of higher education. (P.Ex. 10, Tr. 223) Horowitz thus cannot escape the allegations made against her by the Medical School, allegations she had no opportunity to refute. The stigma is intensified by the fact that nearly all medical schools have a retention policy. (Tr. 46, Howell Depo. 36-38) Horowitz has applied to several medical schools seeking admission, but her applications have all been rejected. Similarly, she has been unable to find employment in any position related to medical science.

Horowitz brought this action against officials of the University and the district court dismissed her action in an unreported opinion (App. 26) and Horowitz appealed. The Court of Appeals ordered the University officials to provide her with a due process hearing prior to dismissal, 538 F.2d 1317 (8th Cir. 1976) (App. 48) and it is from that order which petitioners now seek relief in this Court.

SUMMARY OF ARGUMENT

I. Respondent, a Medical Student in a Public Institution, Is Entitled to Due Process Before Dismissal From School Where the Dismissal Deprives Her of an Interest in Liberty by Foreclosing Educational and Career Opportunities.

Respondent Horowitz was dismissed from medical school for failure to make improvements in clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism. The dismissal precluded Horowitz from accepting an appointment at the University of North Carolina School of Medicine, caused her to be unable to continue her medical education, and foreclosed for her opportunities in her chosen career.

Horowitz seeks only the protections of minimal due process, notice of the charges against her, an opportunity to defend herself against the allegations before an impartial committee, a statement of the decision of the committee and its reasons therefor, and the protection afforded by some type of record of the hearing. Horowitz seeks such a hearing before a committee of the Medical School where, presumably, educational expertise exists to evaluate the allegations put forth in support of the proposed dismissal in light of the evidence presented. The requirement for such a hearing would not result in an intrusion of the courts into traditional academic affairs but would acknowledge the proper role of educators in providing due process to students facing dismissal for reasons, or under circumstances, likely to foreclose further educational or career opportunities for the student. Such a requirement would, in fact, reaffirm existing law that students, while entitled to due process within educational institutions, may obtain

judicial review of dismissals only where based upon arbitrary, capricious, or bad faith action by school officials. The decision of the Court of Appeals in this case thus represents no significant departure from existing law and should be affirmed.

The Medical School, in dismissing Horowitz, deprived her of her interest in liberty by foreclosing her freedom to take advantage of other educational or employment opportunities. *Board of Regents* v. *Roth*, 408 U.S. 564, 573 (1972). The foreclosure was actual, not possible or speculative as in *Bishop* v. *Wood*, 426 U.S. 341 (1976). Here, Horowitz was denied a position at another medical school and likely has been denied any opportunity to further her education or medical career. Although the district court did not make a finding of fact on the foreclosure issue, the Court of Appeals concluded:

> Horowitz has been stigmatized by her dismissal in such a way that she will be unable to continue her medical education, and her chances of employment in a medically related field are severely damaged.

538 F.2d at 1321. (App. 55) From the record it is uncontroverted that Horowitz has been foreclosed from a range of opportunities, *Board of Regents* v. *Roth*, 408 U.S. at 574 (1972), in a manner that denied her due process of law, *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 238 (1956).

The characterization of the dismissal of Horowitz as academic by the Medical School is not relevant to a determination of whether she was entitled to due process. In determining whether due process is required, the Court looks "not to the 'weight' but to the nature of the interests at stake." *Board of Regents* v. *Roth*, 408 U.S. 564, 570-71 (1972). The nature of Horowitz's interest here is her

liberty interest in pursuing her career and whether she was denied that interest for reasons that were characterized as academic as opposed to behavioral is not relevant to the determination of whether due process is required.

The distinction which Petitioners attempt to create between academic and behavioral dismissals does not exist in the law. Courts have declined to review the substance of dismissals where arbitrary or capricious action by school officials was either not alleged or not established, but no court has held, as is the case here, that a school may permanently foreclose chosen career opportunities without due process. Although some courts have referred to a distinction between academic and disciplinary dismissals, such references were not material to the decisions reached and none impaired the concept that due process is required before a range of employment or career opportunities may be foreclosed.

Even if a distinction between academic and behavioral dismissals is recognized, Horowitz was dismissed for reasons which were overwhelmingly conduct-related: clinical competence, peer and patient relationships, personal hygiene, and ability to accept criticism. Of these reasons, only clinical competence is at all related to her academic performance, and even that reason was based upon her appearance and grooming and her slowness in making rounds or coming to class, clearly conduct-related reasons. The remaining reasons were even more closely related to conduct, i.e., getting along with fellow students and faculty, her appearance and her inability to accept criticism. The allegations and disputes underlying these reasons for the dismissal of Horowitz are similar to the factual disputes which have customarily required due process. *Goss* v. *Lopez*, 419 U.S. 565, 575-76 (1975). Nothing less should be permitted here.

II. Petitioners Failed to Provide Respondent With Due Process and Her Summary Dismissal Was Arbitrary and Capricious.

Even if this Court should find that procedural due process was not required prior to the dismissal of Horowitz, this case should be remanded to the Court of Appeals for appellate review of the substantive due process issues which the Court of Appeals explicitly declined to review, 538 F.2d at 1321 n.5. (App. 55)

The Medical School, in dismissing Horowitz, failed to follow its own regulations by not calling Horowitz in for an interview before the Council on Evaluation, as required by the policies of the School. Similarly, the School failed to call together the panel of examining physicians to attempt to resolve their differing opinions after four of the seven doctors recommended that Horowitz either graduate or be continued on probation, even though the procedure established to review the status of Horowitz specifically required that the examining physicians be convened under such circumstances.

The Medical School was arbitrary in dismissing Horowitz when it refused to allow her an opportunity to extend her education at the Medical School even though such extensions, or "decelerations" as they are called at the Medical School, had been routinely granted to other students in order to allow them to acquire or improve clinical skills.

The Medical School also acted arbitrarily in dismissing Horowitz by first giving her credit for successful rotations and later determining, without notice to her, that her performance in such rotations was insufficient and was being used to support her dismissal. Horowitz was thus

arbitrarily led to believe that her work was satisfactory and was therefore unable to improve her work by repeating the rotations, as other students were allowed.

Finally, the dismissal of Horowitz was arbitrary because it was based in large part upon her sex, female, and her personal appearance. Four witnesses testified that Horowitz was a victim of discriminatory application of standards of review to her performance at the Medical School. Prior to her admission to the School, an interviewer had noted that her personal appearance was inappropriate for the Medical School and a professor at the School testified that Horowitz did not fit the stereotype of expectations for a woman in Medical School and was prejudiced in her relations with her peers and with faculty members. Further, Horowitz claims, and the testimony supports the claim, that because of her sex and appearance she was held to standards of achievement and performance that were not expected of male students. In spite of her brilliant academic record, Horowitz was dismissed from the Medical School because, in large part, she did not meet the appearance standards of the institution, in spite of prior knowledge by school officials that her appearance did not fit the program of the school. (P.Ex. 15, Tr. 74)

For these reasons Horowitz was denied substantive due process when she was so summarily dismissed from the Medical School and she is entitled, at the least, to the appellate review of these issues which the Court of Appeals declined to provide when it ruled she was entitled to procedural due process.

ARGUMENT

I. Respondent, a Medical Student in a Public Institution, Is Entitled to Due Process Before Dismissal From School Where the Dismissal Deprives Her of an Interest in Liberty by Foreclosing Educational and Career Opportunities.

Introduction

Charlotte Horowitz was dismissed from Medical School only weeks before the graduation of her class. (App. 22, Stip. 78; App. 112, Tr. 198-199) She was provided neither notice that her dismissal was being considered (App. 116) nor an opportunity to defend herself against adverse allegations. (App. 120-121) The effect of this denial the Eighth Circuit Court of Appeals found from "unrefuted evidence" was that she had been ". . . stigmatized by her dismissal in such a way that she will be unable to continue her medical education, and her chances of returning to employment in a medically related field are severely damaged." 538 F.2d at 1321. (App. 55) The dismissal of Horowitz also caused her to lose an appointment at the Department of Psychiatry of the University of North Carolina School of Medicine, which was contingent upon the award to her of a degree from the U.M.K.C. Medical School. (App. 16, Stip. 47) The damage to the education and career of Horowitz was immediate and irreversible, not speculative or temporary. She was accused of having failed to make satisfactory improvements in the areas of clinical competence, peer and patient relations, personal hygiene and ability to accept criticism (App. 18), all without knowledge to her that such accusations were the basis for her proposed dismissal and without any opportunity to learn of and rebut the factual allegations

underlying the accusations. Under these circumstances she was entitled to a due process hearing prior to dismissal from Medical School.

"However little courts may know about education or school discipline, they do know about fact-finding, decision-making, fairness, and procedure." Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U.Pa.L.Rev. 545 (1971). The requirement that Horowitz be given a hearing does not mean that the courts will interfere with academic evaluations of graduate students as the Medical School argues, Brief of Petitioners at 21, but only that medical schools must organize their own expertise in making decisions concerning the dismissal of students in such a manner as to provide students with an opportunity to learn of and rebut any factual allegations which form the basis of the proposed dismissals. Such a procedure would ensure that decisions of dismissal would be based upon the experience and judgment of educators, and students aggrieved by dismissal would have judicial review only on allegations of arbitrary, capricious, or bad faith exercise of the right of dismissal, judicial review available to all students under present law, as Petitioners concede, Brief of Petitioners at 21-22, *Connelly v. University of Vermont and State Agriculture College*, 244 F.Supp. 156 (D.Vt. 1965).

For this Court to require a hearing before dismissal would neither cause an intrusion of the courts into academic affairs nor change existing law. Petitioners advance the anomalous position that although junior high school students are entitled to a due process hearing before short-term suspensions for disobeying a teacher's instruction, graduate students, whose substantial investment of years of education in preparation for a professional career is in jeopardy, are not entitled to the minimal assurances

of fairness provided by such a hearing as is required for short-term suspensions of fourteen year olds. The argument of Petitioners, however, does not reflect the requirements of due process, requirements observed by the Court of Appeals when it ordered a hearing for Horowitz. Horowitz was entitled to a hearing before she was dismissed from the Medical School where that dismissal foreclosed opportunities for her to further her education or work in her chosen career.

A. Respondent Is Entitled to a Due Process Hearing Before She Is Deprived of Her Interest in Liberty.

This case falls squarely within the rule of *Board of Regents* v. *Roth*, 408 U.S. 564 (1972) and *Bishop* v. *Wood*, 426 U.S. 341 (1976). In *Roth*, this Court held that a person is deprived of liberty if the state "forcloses his freedom to take advantage of other employment opportunities." 408 U.S. at 573. *Bishop* v. *Wood* is in accord. That case applied the rule of *Roth* and held that there must be an actual foreclosure, and that nonretention of an employee does not infringe the employee's liberty interest where he "remains as free as before to seek another [position]." *Board of Regents* v. *Roth*, 408 U.S. at 575.

This distinction is an important one. Nearly anything that an employer or school might do to an employee or student respectively could conceivably make the employee or student "somewhat less attractive to . . . employers," *Bishop* v. *Wood*, 426 U.S. at 348, yet such marginal, and often unavoidable effects on future employment prospects do not rise to the level of a Constitutional infirmity.

This distinction between de minimis actions by the state which marginally affect employment opportunities on the one hand, and effective foreclosure of access to

a profession on the other, is the key to the *Roth-Bishop* line of cases. Those cases consistently have held that the former is not a Constitutionally protected liberty interest, but that the latter is. Thus Petitioners misread *Bishop* when they state that because there was no disclosure of the reasons for the dismissal of Charlotte Horowitz, she is not entitled to notice and a hearing. Brief of Petitioners at 17.

The critical factor in *Bishop*, as it was in *Roth*, was not the presence or absence of public disclosure, but rather the fact that both discharged employees "remain[ed] as free as before" to seek other jobs. This was made explicit in *Bishop*, where the Court stated that the "conclusion [embodied in the passage from *Roth* just quoted] applies . . . when there is no public disclosure of the reasons for the discharge." 426 U.S. at 348.

Petitioners' erroneous reading of *Bishop* leads them to argue that absent disclosure of the reasons for dismissal, there is no right to notice and a hearing. In fact, the absence of disclosure is a prerequisite for the application of the *Roth-Bishop* foreclosure standard. Had there been disclosure, *Paul* v. *Davis*, 424 U.S. 693 (1976) would control. However, because the issue in this case is not disclosure or damage to reputation, *Paul* v. *Davis* is irrelevant. That case held that defamatory injury to reputation was not a Constitutional issue, but Horowitz does not base her Constitutional argument on the damage which Petitioners have done to her reputation. Rather, she bases it on Petitioners' foreclosure of her opportunities to pursue her chosen career in psychopharmacology. That foreclosure (in contrast to the discharges in *Roth* and *Bishop* which left the respective employees' employment opportunities undiminished) is a Constitutionally protected liberty interest under the Fourteenth Amendment.

This Court recognized the breadth of the liberty interest protected by the Fourteenth Amendment in *Roth*, and, more recently, in *Ingraham* v. *Wright*, ... U.S. ....., 97 S.Ct. 1401, 1413 (1977). Both of those cases quoted from *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923) wherein the Court stated that

> [w]hile this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

The undisputed testimony in this case shows that Horowitz's opportunity to pursue her chosen occupation has been foreclosed in two ways. First, the record shows that as a result of the School's dismissal of her from medical school, Horowitz lost the job which she had been offered by the University of North Carolina. (App. 16, Stip. 47) Thus, unlike *Bishop* v. *Wood*, where this Court could only speculate as to whether the discharged policeman would be able to find alternative employment, here the record is clear. Horowitz had a job in her chosen profession. Petitioner's acts denied her that job. This stark foreclosure of Horowitz's employment opportunities is not remote or speculative. It is an accomplished fact. It is precisely the type of foreclosure which does more than merely make Horowitz somewhat less attractive to employers, but which

actually renders her dramatically less free than before to seek alternative employment.

Horowitz concedes, however, that Petitioners have not gone as far in foreclosing her opportunities as the "horrible hypothetical" alluded to in *Roth*. Petitioners have not "invoke[d] any regulations to bar" Horowitz from practicing her profession in Missouri. But to hold that the liberty interest in pursuing one's chosen profession is infringed only when the state by specific statute or regulation prohibits that person from pursuing his or her occupation is to eviscerate an important aspect of our Constitutionally protected liberty. It would reduce that liberty to a mere protection against Bills of Attainder. Such a dramatic upheaval in Constitutional law is totally unwarranted.

The Court in *Roth* clearly did not believe that only passage of regulations barring a person from employment would constitute a foreclosure of employment opportunities. This is demonstrated both by the holding in the companion case to *Roth*, *Perry* v. *Sindermann*, 408 U.S. 593 (1972) and by the Court's discussion of *Schware* v. *Board of Bar Examiners*, 353 U.S. 232 (1957).

> The Court has held, for example, that a State, in regulating eligibility for a type of professional employment, cannot foreclose a range of opportunities "in a manner . . . that contravene[s] . . . Due Process," Schware v. Board of Bar Examiners, 353 U.S. 232, 238 and specifically in a manner that denies the right to a full prior hearing.

Board of Regents v. *Roth*, 408 U.S. at 574 (1972). This is precisely what the Petitioners have done to Horowitz. They have foreclosed a range of opportunities in a manner that contravenes due process.

Second, Horowitz has, as a practical matter, been foreclosed from pursuing her career in psychopharmacological research because, having been dismissed from one medical school, she will find it nearly impossible to gain admission to another. (App. 61-62) Petitioner blandly asserts that Horowitz is free to seek admission to other medical schools. Brief of Petitioners at 18. This misses the point. The issue is not whether she is free to seek admission, but whether she is as free as before to obtain admission to medical school. Clearly she is not.

Moreover, the uncontradicted testimony of Dr. Hilliard Cohen, the director of clinical pathology at the Veterans Administration Hospital in Kansas City and an experienced professor at the University of Kansas Medical School, demonstrates that Horowitz likely will be unable to gain admission to another medical school. Dr. Cohen graphically described how Horowitz would have serious difficulties in obtaining employment in a medically related field. He testified:

> Yes, I would be very much concerned about an individual who was dismissed from a medical school, or, for that matter, from any graduate school. This to me is a very serious matter and I would have to look very carefully into that person's background, record and so forth. And if there were two individuals that, say, that person or someone else were applying and otherwise would have equal qualifications, roughly, I would lean heavily to the other person who was not dismissed from a graduate school.
>
> . . . .
>
> Yes, I think it would be a significant black mark against that person's name, I think it would stigmatize that individual, I think that person would probably

> be—well, would have great difficulty to get into another medical school, if at all. (App. 62)

Moreover, this Court can take judicial notice of the highly competitive nature of medical school admissions today. Where admission to Medical School is so competitive, dismissal ". . . significantly reduces a student's chances of completing his educational program. . . . Furthermore, the dismissal always remains a part of his educational record." *Developments in the Law—Academic Freedom*, 81 Harv. L. Rev. 1045, 1154 (1968). Cf. Dessem, *Student Due Process Rights in Academic Dismissals from the Public Schools*, 5 J. Law-Ed. 277, 287 n.74 (1976) (stating that the "Dean's Letter" is used by many professional schools to determine if students have ever been disciplined for academic or nonacademic reasons).

The district court did not enter a finding of fact on the issue of whether Horowitz's career opportunities had been foreclosed by Petitioners' acts. The only court below which addressed itself specifically to Horowitz's professional future was the Court of Appeals for the Eighth Circuit, which concluded:

> Horowitz has been stigmatized by her dismissal in such a way that she will be unable to continue her medical education, and her chances of employment in a medically related field are severely damaged.

Horowitz v. *Board of Curators*, 538 F.2d 1317, 1321 (8th Cir. 1976). (App. 55) The court further emphasized the importance which medical schools attach to prior expulsions by noting that Petitioners' own application forms require every applicant to explain fully any prior dismissals from college or graduate school. *Id.*, at n.3. (App. 54)

This Court has previously held that a similar evidentiary showing is sufficient to establish the presence of

a liberty interest. In *Goss* v. *Lopez*, 419 U.S. 565, 575-76 (1975) the Court stated:

> School authorities here suspended appellees from school for periods of up to 10 days based on charges of misconduct. If sustained and recorded, those charges could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment.[7]
>
> . . . .
>
> [7]Appellees assert in their brief that four of 12 randomly selected Ohio colleges specifically inquire of the high school of every applicant for admission whether the applicant has ever been suspended. . . . Appellees also contend that many employers request similar information.

The record establishes in this case that Horowitz's career opportunities were foreclosed, both with respect to the loss of a promised position at the University of North Carolina School of Medicine and because of the severely damaged opportunities for further educational or promotional positions consequent to the nature of her dismissal and the impossibility of preventing other institutions from learning the reasons for her dismissal. For these reasons, Horowitz was deprived of her interest in liberty.

B. The Characterization of the Dismissal As Academic or Disciplinary Is Not Relevant to the Question of the Requirement of Due Process.

Petitioners seem to contend that no process is due Horowitz because the reasons for her dismissal were allegedly "academic." Brief of Petitioners at 15-19. This argument is contrary to the well established holdings of

this Court. It is elementary that in determining whether due process applies, the Court looks "not to the 'weight' but to the *nature* of the interests at stake." *Board of Regents* v. *Roth*, 408 U.S. 564, 570-71 (1972), quoted in *Ingraham* v. *Wright*, ... U.S. ....., 97 S.Ct. 1401, 1413 (1977). The nature of Horowitz's interest is her liberty interest in pursuing her chosen profession. That her opportunity to enter that profession was foreclosed for allegedly academic rather than disciplinary reasons is of no consequence in evaluating the *nature* of her interest.

Moreover, upon close examination the entire dichotomy between academic and disciplinary expulsions collapses. The cases upon which Petitioners rely in support of this false dichotomy are inapposite. In *Gaspar* v. *Bruton*, 513 F.2d 843 (10th Cir. 1975) for example, the defendants sought to discharge a nursing student for clinical deficiencies. Before dismissing her, however, the school provided the student with four separate opportunities to contest the charges against her. She had a conference with the school superintendent at which three members of the school staff were present. She then met with the school board. Third, she was given a hearing before the superintendent at which staff members were present and available for cross-examination. Finally, she had a full evidentiary hearing before the board at which detailed testimony was given and witnesses could be cross-examined. Plaintiff was present at each of these four proceedings. The Tenth Circuit ruled that these elaborate procedures satisfied due process and denied relief. Its statement that the expulsion was really academic and required only notice to the student of the academic deficiencies was hence mere dicta.

In contrast to the *Gaspar* procedures, Charlotte Horowitz was never permitted to be present when her status

as a student was discussed. (App. 17, Stips. 52 and 53) She was never allowed to confront or cross-examine witnesses nor even to meet with the decision-makers. (App. 120-121) In contrast to the four proceedings in which the student could participate which the school in *Gaspar* provided, Petitioners here held a series of secret, ex parte meetings. Petitioners' conduct thus falls far short of both the example set by the school in *Gaspar* and of what is required by the Fourteenth Amendment.

In *Mahavongsana* v. *Hall*, 529 F.2d 448 (7th Cir. 1976), the plaintiff's academic competence was not even the principal issue. There the university had changed its degree requirements after plaintiff had enrolled. Plaintiff maintained that she need only satisfy the degree requirements in effect when she enrolled, while the university contended that she had to meet the newer requirements, which included a comprehensive examination. Plaintiff failed the examination twice, and then filed suit, alleging breach of contract and violation of *substantive* due process. At trial, plaintiff did not even allege a denial of *procedural* due process, and it is procedural, rather than substantive due process which is at issue in the case at bar. Thus the Seventh Circuit's statements about the distinction between academic and disciplinary dismissals are at most an alternative holding, inasmuch as the case was decided on the contract and substantive due process grounds.

Moreover, to the extent that procedural due process was at issue in *Mahavongsana*, the student's rights were accorded more protection by the university there than they were in this case. In *Mahavongsana*, the university gave the student two chances to take the required comprehensive examination. In addition, after she failed the exam both times, the university offered her the opportunity to take additional courses in lieu of the exam. Charlotte

Horowitz was given no such opportunity and has in fact sought such opportunities.

The Seventh Circuit also intimated that an alternative ground for denying plaintiff's claim was her failure to pursue the administrative remedies open to her. The court stated that after the university offered to allow plaintiff to take additional course work she

> nevertheless chose to spurn the university's efforts to tailor a special program to resolve her dilemma. Instead of pursuing her grievance through the administrative remedies provided for in the By-Laws of the Board of Regents of the University, she brought suit.

Id., at 450. Charlotte Horowitz, by contrast, exhausted her administrative remedies before commencing this suit.

Keys v. *Sawyer*, 353 F.Supp. 936 (S.D.Tex. 1973), a case from which Petitioners quote at pages 24-25 of their brief, is also distinguishable. There the plaintiff had voluntarily withdrawn from school and waived his administrative remedies. Moreover, the issues had already been litigated in another action and the judgment in the prior case was res judicata. Hence the passage which Petitioners quote was not necessary to the decision.

Even at that, the quotation is out of context and, as it appears in Petitioners' brief, misleading. The essence of plaintiff's claim in *Keys* was the request that two of his grades be changed because he believed that his professors' grading systems were unfair. It was this challenge to particular grades, rather than a challenge to the dismissal itself, which the court was discussing in the passage which Petitioners quote. This can be seen clearly by placing the language which Petitioners cite in its proper context.

The gravamen of plaintiff's complaints is the basic unfairness of grading systems employed by two individual professors. It is difficult to imagine an area of academic life more suitable for judicial abstention. The assignment of grades to a particular examination must be left to the discretion of the instructor. He should be given the unfettered opportunity to assess a student's performance and determine if it attains a standard of scholarship required by the professor for a satisfactory grade. The federal judiciary should not adjudicate the soundness of a professor's grading system, nor make a factual determination of the fairness of the individual grades. Such an inquiry would necessarily entail the complete substitution of a court evaluation of a complainant's level of achievement in the subject under review, and the standard by which such achievement should be measured, for that of the professor. It would be difficult to prove by reason, logic or common sense that the federal judiciary is either competent, or more competent, to make such an assessment.

Id., at 939-40. Thus the *Keys* court was not, as Petitioners represent, talking about requiring notice and a hearing before expelling a student, but rather about exercising judicial review of particular grades given by particular professors in particular courses. Horowitz, unlike the plaintiff in *Keys*, is not seeking to have the judiciary review her medical qualifications. She is merely asking that she be given the opportunity to answer the charges made against her before the university dismisses her.

In *Connelly* v. *University of Vermont and State Agriculture College*, 244 F.Supp. 156 (D.Vt. 1965), upon which Petitioners rely extensively, the court specifically acknowledged that where the plaintiff alleged that he "was failed

by an instructor who had made up his mind to fail him before he completed the course" he was entitled to a hearing. That is precisely the situation here, since, as Dr. Cohen testified, Dean Noback may have already made up his mind to dismiss Horowitz even before he heard the evaluations of the seven examining physicians. (App. 64)

Finally, Petitioners totally misread *Brookins* v. *Bonnell*, 362 F.Supp. 379 (E.D.Pa. 1973) when they cite it for the proposition that courts should not act where the school chooses to characterize a dismissal as "academic." In fact, the court in *Brookins* actually ordered the school to reinstate the student pending a final order by the court or, alternatively, to give him a full hearing. Thus the *Brookins* court granted the relief which Horowitz seeks in this case.

Moreover, the court recognized that the line between academic and disciplinary expulsions was a faint one at best, and that where, as in the instant case, the essence of the case was a factual dispute revolving around alleged violations of school rules, the student was entitled to the protections of due process. The court's well-reasoned opinion is worth quoting at some length:

> However, the courts are not totally precluded from examining scholastic dismissals. If the student was actually expelled for reasons other than the quality of his work or if the student failed because of bad faith or arbitrary and capricious action by an instructor, the courts will order the granting of a fair and impartial hearing.
>
> The issue is the characterization of plaintiff's alleged failures . . . .

> This case is not the traditional disciplinary situation where the student violates the law or a school regulation by actively engaging in prohibited activities. Plaintiff has allegedly failed to act and comply with school regulations. . . . Like the traditional displinary case, the determination of whether plaintiff did or did not comply with the school regulations is a question of fact. Most importantly, in determining this factual question, reference is not made to a standard of achievement in an esoteric academic field. Scholastic standards are not involved but rather disputed facts concerning whether plaintiff did or did not comply with certain school regulations. These issues adapt themselves readily to determination by a fair and impartial "due process" hearing.
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> . . . .
>
> Underlying the present controversy appears to be defendants' sincere convictions that the dismissal of plaintiff was for completely proper reasons, and that it would be a waste of time and effort to hold a hearing. Plaintiff, however, contends to the contrary and it is precisely for this reason that final determination of the disputed, or at least unclear facts, cries out for a fair and impartial hearing.

Id., at 382-383.

This case presents just such a factual dispute between a school and a student. The student claims she was discriminated against on the basis of sex and religion and because of her physical appearance over which she had no control. The school claims the student had poor relationships with others; that she did not keep to established schedules nor meet clinical responsibilities gracefully and on time; and that her personal appearance was poor.

The Court should not be misled by Petitioners' labeling of this disputed behavior as "clinical incompetence." That phrase may sound pedagogical, but the questions of whether Horowitz wore clean lab coats or combed her hair or cleaned her fingernails are not determined with reference "to a standard of achievement in an esoteric academic field. Scholastic standards are not involved but rather disputed facts . . . ." *Brookins* v. *Bonnell*, 362 F.Supp. at 383. Hence the instant case presents the classic type of dispute which an open hearing in which the accused may participate is best suited to resolve.

> [F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights . . . .
>
> . . . .
>
> Man being what he is cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights. At least such is the conviction underlying our Bill of Rights. That a conclusion satisfies one's private conscience does not attest its reliability. The validity and moral authority of a conclusion largely depend on the mode by which it was reached. Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling so important to a popular government, that justice has been done.

Joint Anti-Fascist Refugee Committee v. *McGrath*, 341 U.S. 123, 170-72 (1951) (Frankfurter, J., concurring).

Thus this Court should decline to create a difference between those expulsions which purport to be academic and those which purport to be disciplinary, at least in cases like the one at bar where such a difference does not in fact exist. Rather, the Court should look to the facts of each case, examine the nature of the interests involved, and apply the standard for due process mandated by *Matthews* v. *Eldridge*, 424 U.S. 319, 335 (1976). The important factor is not the label applied to the dismissal, but the nature of the controversy. And where, as here, the controversy is over an individual's personal cleanliness and attitude, the best way to determine the facts is through a hearing.

If, however, the Court decides to recognize different standards for academic and disciplinary proceedings, Horowitz submits that in her case the expulsion was for disciplinary reasons. The Council on Evaluation placed Horowitz on probation in early summer, 1972, because of her "barely satisfactory work on a pediatrics rotation plus behavioral qualifications." While the first reason might be characterized as academic, the second is clearly disciplinary. The Council decided on December 26, 1972, that Horowitz would not graduate unless she improved in the areas of clinical competence, peer and patient relationships, personal hygiene and ability to accept criticism. (App. 221) Of these four reasons, only clinical competence is at all related to her academic performance.

Petitioners claim that Horowitz was dismissed for clinical incompetence—assertedly an academic rather than a disciplinary reason. Yet the bases for that determination of clinical incompetence were Horowitz's personal appearance and grooming, her position at the end of the line when making rounds, and her slowness in entering the room for class. (Opinion of the United States District Court, App. 34)

Surely the act of being last to come into a classroom is no more an academic failing than is being slow to respond to a teacher's instructions, *Ingraham* v. *Wright*, ... U.S. ....., 97 S.Ct. at 1405, or refusing to leave a school auditorium, *Goss* v. *Lopez*, 419 U.S. at 569. In those two instances this Court characterized the proceedings as disciplinary and held that the protections of due process applied. The actions in controversy here are no less susceptible of characterization as disciplinary than those in *Goss* and *Ingraham*. Petitioners should not be permitted to deprive Horowitz of liberty without due process by the simple expedient of characterizing her dismissal as academic rather than disciplinary. To the extent that the distinction between academic and disciplinary dismissals has meaning, Horowitz's dismissal was for disciplinary reasons.

Ultimately, though, this case should not turn on what are fundamentally problematic and indeterminate classifications. Whether one characterizes the context of Charlotte Horowitz's dismissal as academic or disciplinary, the ultimate issues are factual and behavioral: Was she habitually late for class? Did she decline to participate in clinical activities? Was she discriminated against on the basis of sex or religion? Did her physical appearance unfairly influence the evaluations of her work? These are factual disputes which can be resolved fairly only if Horowitz is afforded the opportunity to confront and cross-examine those who challenge her clinical abilities.

C. The Nature of the Due Process Hearing Required.

Having decided that the nature of Horowitz's interests, rather than an artificial distinction between academic and disciplinary dismissals, determines her right to due process,

the Court must then decide "what process is due." *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972). The standard for that determination was laid down by this Court in *Matthews* v. *Eldridge*, 424 U.S. 319, 335 (1976):

> [I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interests through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Applying that standard to this case, it is clear that Horowitz should have been afforded an evidentiary hearing with the opportunity to confront and cross-examine those who alleged that she should not graduate.

The first element of the *Matthews* standard is consideration of the private interest affected by the school's action. As discussed above, that interest is nothing less than Horowitz's right to enter her chosen profession. Horowitz is simply a brilliant woman. As the Eighth Circuit found:

> she has a Bachelor's degree in chemistry from Barnard College and a Master's in psychology from Columbia University. She studied pharmacology at Duke for one year, taking the same curriculum as the first year medical students there. She began as a sophomore at the Women's Medical College of Pennsylvania but withdrew in good standing because of illness her first semester. She also did graduate study and worked

> in the field of psychopharmacology at the National Institute of Health in Bethesda, Maryland for five years. She scored above the 99th percentile on the Graduate Record Examination in Verbal Aptitude, Quantitative Aptitude, Advanced Psychology and Advanced Chemistry. Her scores on the Medical College Admissions Test were also extremely high, with scores in the 99th percentile in the General Information and Science categories. She received excellent recommendations from those with whom she had worked at the National Institute of Health and educators.

538 F.2d at 1318. (App. 48-49) However the School, by expelling her, has shattered Horowitz's professional future. Her private interest in rebuilding that future and hence having the opportunity to fulfill her potential as a scholar and a scientist is of tremendous weight.

Next, *Matthews* requires consideration of the risk of erroneous deprivation and the value of procedural safeguards. That risk is high. The record indicates that Horowitz was the victim of sexual and/or religious discrimination. Dr. Hilliard Cohen, one of the seven physicians who interviewed Horowitz, testified that he was afraid that Dean Noback had already made up his mind about her so that even the ex parte review of her dismissal by the Council on Evaluation would be in vain. Dr. Marjorie Sirridge, a member of the Committee and a professor at the Medical School, voted that Horowitz be continued as a student and expressed concerns about sexual discrimination against her, noting that the Committee had never met with her. (App. 81-82)

Moreover, only two men, Dr. Smull and Dean Noback, controlled the steps which led to Horowitz's expulsion. Dr. Smull initiated the complaints against Horowitz when,

in March 1972, he caused a letter to be sent to her criticizing her performance in the pediatrics rotation. (App. 158, 211) As Chairman of the Council on Evaluation, Smull judged the charges against Horowitz, and he later presented those charges to the Coordinating Committee. (App. 79-80, 115, Tr. 466-467) Dean Noback was Horowitz's liaison with the administration. He had the incompatible responsibilities of helping her fulfill the university's expectations and at the same time judging her as Chairman of the Coordinating Committee. He devised her appeals procedure (Tr. 188-190), while reserving the power to veto any recommendations made. (App. 79, 114)

In light of these indications of conflicting interests and bias, the fundamental safeguards of representation by counsel, confrontation, and cross-examination of witnesses are critical, especially where, as here, the case centers around disputed facts. The probable value of due process procedures in eliminating the risk of erroneous deprivation of Horowitz's interest in her professional career is great; such procedures help assure a ". . . profound attitude of fairness . . ." *Joint Anti-Fascist Committee* v. *McGrath*, 341 U.S. 123, 162 (1951) (Frankfurter, J., concurring).

The final element in the *Matthews* standard is the burden on the Petitioners of requiring a hearing. A simple hearing with opportunity for confrontation, cross-examination, and representation by counsel could undoubtedly have been provided at less cost to Petitioners than the elaborate series of ex parte proceedings which Petitioners employed in this case. Hence, requiring a hearing in this case will not impose a significant additional fiscal or administrative burden on Petitioners in future cases. In fact, Dr. Mary Howell, Associate Dean of Harvard Medical School, testified that due process hearings would promote

the educational mission of medical schools without interfering with their primary purposes. (App. 178-179) Thus, applying the *Matthews* test, Horowitz's private interest in her professional future is great; the risk of erroneous deprivation is large and the protection afforded by procedural safeguards substantial; while the burden on Petitioners is small.

The Court of Appeals correctly held that Horowitz was deprived of a liberty interest in that Petitioners' expulsion of her foreclosed her opportunity to pursue her chosen career. The dictates of procedural due process require that Petitioner provide Horowitz with a hearing at which she may rebut the charges made against her.

D. Pequiring a Due Process Hearing Will Not Entangle the Judiciary in Educational Evaluations.

To require a due process hearing before students are dismissed from educational institutions for academic reasons does not result in substituting a judge's assessment for a teacher's evaluation of the academic progress of students. Clarifying the due process requirement by mandating hearings will assure that academic performance is evaluated not by judges but by educators with academic expertise. Such hearings would be in educational institutions, not courtrooms. It is agreed that teachers are more proficient than students or judges in evaluating academic performance and should make such evaluations.

A due process hearing should require written notice to the student setting forth the basis for the proposed dismissal and offering the student an opportunity to rebut derogatory information or present mitigating circumstances. Such a procedure would provide a record of the reasons for dismissal and serve to prevent attempts

by students to obtain judicial review of the merits of evaluations or other traditional academic decisions. Review by the courts would remain limited, as it is now, to consideration of claims of arbitrary, capricious, or bad faith decision-making. This traditional review would be facilitated by the availability of the record of the due process hearing.

Such a hearing would serve the interests of all parties. The notice requirement would focus the decision-making apparatus of the institution upon the school's mission and the student's accomplishments or failures in that regard. The hearing would permit the resolution of factual issues in the educational institution where access to the documents and personnel involved in evaluations is not burdensome. The student would be permitted to argue the importance of any mitigating circumstances. The informal nature of an administrative hearing would encourage compromises which advance the interests of both the school and the student, an important consideration in light of the policy of most medical schools to help students overcome academic difficulties so that educational investments in students once admitted may ultimately serve the public. Testimony of Dr. Mary Howell. (Howell Depo. 36-38)

In this case a due process hearing prior to dismissal will permit Charlotte Horowitz and the Medical School to resolve issues best suited for resolution within the School by persons with educational expertise. At issue is whether the Medical School treated and evaluated Horowitz more stringently because she was female, as was believed to be the case by an educator at the School, Dr. Marjorie Sirridge (App. 81-84), by an expert witness, Dr. Mary Howell, Associate Dean of Harvard Medical School (App. 175-180), and by Dr. Helene Guttman, Professor of Biological Sciences at the University of Illinois. (App. 136-

139) Also at issue is whether the physical appearance of Horowitz prejudiced her by restricting educational opportunities or adversely affecting her evaluations, as was predicted by an interviewer for the Medical School prior to the admission of Horowitz (P.Ex. 15, Tr. 74), as was believed to be the case by Dr. Marjorie Sirridge (App. 84-84) and as testified to by Dr. Christopher Dennis. (App. 168-173) See photographs of Horowitz, P.Exs. 111, 112, and 113. (Tr. 30)

Also at issue is whether the grading system of the School was changed to the disadvantage of Horowitz by first giving her credit for completion of the pediatrics rotation (App. 12, Stip. 32) and thereafter using her performance in pediatrics to justify in part her dismissal (Tr. 183-184, App. 12, Stip. 33) without informing her or giving her an opportunity to repeat the course. (App. 111-112) Similarly, Horowitz could at a hearing argue in mitigation the appropriateness of lengthening her educational experience, referred to as deceleration by the Medical School, as was offered to other students. (App. 118-119)

Each of these issues is best resolved by a due process hearing, conducted by persons with educational expertise for such informal but adversary hearings, which facilitates the resolution of factual issues, Fuller, *The Adversary System*, Talks on American Law 35 (Berman ed. 1972), and permit a student to "characterize his conduct", *Goss* v. *Lopez*, 419 U.S. 565, 584 (1975), in mitigation of the threatened dismissal. Cf. *Betts* v. *Board of Education*, 466 F.2d 629, 633 (7th Cir. 1972).

Petitioners can hardly argue that such a due process hearing would unduly burden the Medical School. It likely would require far less time and expense than the Medical School's review panel of seven physicians which

related only to the question of whether to graduate Horowitz but not to the decision to dismiss her, and, being advisory, had no actual authority as noted by the Court of Appeals, 538 F.2d at 1321 n. 4. (App. 55) A sister medical school under the supervision and control of Petitioners, at Columbia, Missouri, has, since prior to the trial in this case, provided due process hearings to students faced with dismissal. *Lukacs* v. *Curators of the Univ. of Missouri*, No. 74CV109-2 (W.D.Mo. July 23, 1974), cited in Dessem, *supra* at 281 and 299 n. 130. Also, it is believed that for the last two years the Medical School from which Horowitz was dismissed has provided due process hearings to several students threatened with dismissal.

Due process hearings are neither particularly burdensome nor expensive; they help assure fundamental fairness by focusing dismissal proceedings upon important issues; they offer students and schools opportunities to select courses of action less severe than dismissal and thereby salvage important investments in specialized training; and, they promote the overall mission of professional schools by demonstrating the democratic ideal of fairness, in addition to teaching it. Due process ". . . compounded of history, reason, the past course of decisions, and stout confidence in the strength of the democratic faith which we profess . . .", *Joint Anti-Fascist Committee* v. *McGrath*, 341 U.S. 123, 163 (1951) (Frankfurter, J., concurring), serves both the interests of students and advances the purposes of educators, without sacrificing any of the independence and academic freedom traditionally accorded to educational institutions. The Court of Appeals properly ordered that the Medical School provide Horowitz with a due process hearing and this Court should either affirm that order or dismiss the writ of certiorari as improvidently granted.

II. Petitioners Failed to Provide Respondent With Due Process and Her Summary Dismissal Was Arbitrary and Capricious.

Introduction

Horowitz was provided neither notice nor an opportunity for a hearing prior to her dismissal from the Medical School. (App. 17, Stip. 52) As the Court of Appeals found:

> Horowitz was never given a chance to appear before the Council on Evaluation, the Coordinating Committee or the Dean, for a hearing during the dismissal procedure, nor was she informed of the time or place of any of their meetings. Neither was she given copies of the formal evaluations or other evidence which the Council and the Committee considered.

538 F.2d 1320. (App. 53) The so-called "appeal" procedure by which Horowitz was examined by seven physicians related only to the decision that she not graduate, 538 F.2d at 1321 n. 4 (App. 55), not to the later decision to dismiss her. (App. 18-22, Stips. 58, 67, 71, 73 and 77) Thus, it is uncontroverted that Horowitz was not provided with notice of the grounds for her dismissal or an opportunity to rebut those grounds prior to the decision to dismiss her.

The decision to dismiss Horowitz from the Medical School was made in an arbitrary and capricious manner and should this Court find that Horowitz was not entitled to notice and an opportunity for a hearing prior to dismissal, this cause should be remanded to the Court of Appeals for consideration of the substantive due process claims of Horowitz which the Court of Appeals explicitly declined to rule upon, 538 F.2d at 1321 n. 5. (App. 55)

The substantive due process claims of Horowitz include the failure of the Medical School to follow its own rules and regulations in dismissing her, the decision to exclude Horowitz from the option of extending her education at the School even though that option was offered to other students, the alteration by the School of the standards by which Horowitz was evaluated and the *ex post facto* application of new standards to the performance of Horowitz, the discriminatory evaluation of Horowitz based upon her sex and physical appearance, and the arbitrary nature of the assessment of her clinical competence. The courts may overturn the dismissal of a student on substantive due process grounds where such dismissal is arbitrary and capricious. *Greenhill* v. *Bailey*, 519 F.2d 5, 10 n. 12 (8th Cir. 1975). Horowitz is entitled to an appellate review of such issues if this Court should fail to sustain her procedural due process claim based upon her substantive claims in the following respects.

A. The Medical School Failed to Follow Its Own Rules and Regulations in Dismissing Horowitz.

Where institutions grant procedural protection in excess of the protections required by law, such institutions must follow their own procedure. *Service* v. *Dulles*, 354 U.S. 363 (1957). See also *Behagen* v. *Inter-Collegiate Conference of Faculty Representatives*, 346 F.Supp. 602 (D.Minn. 1972), where the court stated:

> It is elemental that action beyond the scope of a body's own procedural regulations is in violation of due process of law.

Similarly, in *Warren* v. *National Association of Secondary School Principals*, 375 F.Supp. 1043 (N.D.Tex. 1974), it was held that where an educational institution creates procedural rights above a constitutional minimum, its own

rules proscribe the boundaries of due process. The dismissal of Horowitz from the Medical School was deficient when measured against its own rules and regulations in two respects.

First, Provost Dimond circulated a memorandum setting forth newly promulgated procedures of the Medical School relating to the evaluation of students and the status of students at the Medical School. (P.Ex. 46, Tr. 177) This memorandum was made available to students in the December 11, 1972 *School of Medicine Newsletter* and set out the procedures to be followed regarding a student's probation or removal from school. (App. 16-17, Stip. 48) Paragraph 7 of this letter provided that the Council on Evaluation would normally review three sources of information: evaluations of the students, results of quarterly examinations, and the recommendations of the docent for each student. The procedure provided, further, that if the Council on Evaluation "finds itself operating without adequate information, it has the responsibility of calling the student forward for an interview. . ." The Council on Evaluation did, in fact, find "itself operating without adequate information", and utilized two additional sources of information: the results of the examinations of the seven examining physicians (App. 116-117, Tr. 206-208) and peer evaluations of Horowitz. (Tr. 178) Peer evaluations were made by students when "students are on concurrent assignments in any of the major curriculum rotations." (Tr. 178) Dean Noback also testified that peer evaluations put "in the hands of the Evaluation Council on a sequential basis the assessment of individuals about the performance characteristics of the students. . ." (Tr. 178)

Even though the Council on Evaluation thus acquired additional information beyond the three usual sources, it

failed to call Horowitz forward for an interview as required by its own rules and regulations. Thus, Horowitz was denied the only opportunity for a hearing which the rules provided to her in a situation where her status at the school was in jeopardy. Failure of a medical school to follow its own regulations was arbitrary and deprived Horowitz of due process.

Secondly, the Medical School failed to follow its own procedures for determining the results of a set of oral and practical examinations administered to Horowitz. On March 15, 1972, Dean Noback sent a letter to each of seven physicians who had been asked to give oral and practical examinations to Horowitz. (P.Ex. 58, Tr. 18) This letter of instruction asked the physicians to reach one of three possible recommendations: that she graduate on schedule, that she remain on probation, or that she be dropped from the Medical School. Simultaneously, Dean Noback prepared a memorandum establishing the procedure for compiling the recommendations of the panel of examining physicians. (P.Ex. 59, Tr. 189) This memorandum "became an additional part of operating procedure" (Tr. 189) and stated that a majority of the recommendations of the examining panel would determine the judgment of the panel. Further, if there was not a majority opinion, the Dean would call the panel together promptly to discuss the evaluation of the individual student and to solve differences in judgment among the examining physicians.

The letters of the seven examining physicians (P.Exs. 60, 61, 63, 64, 65, 66, and 68, Tr. 35 and 202), when divided among the three possible recommendations required by Dean Noback (P.Ex. 58, Tr. 18) reveal there is clearly no majority for any one of the three recommendations. Two doctors recommended that Horowitz be graduated

immediately, two recommended that she be dismissed from the School, and three doctors recommended that she continue in school on probation. (App. 113, Tr. 200) The tallying regulation of the Medical School (P.Ex. 59, Tr. 189) provided that if there was no majority opinion then the panel would be called together to discuss the situation and the evaluation of the student. The seven examining physicians were never called together to participate in any type of discussion concerning Horowitz (App. 73, Tr. 47-48) nor did they consult with each other. (App. 73)

The Medical School failed to follow its own rules by not carrying out the further requirements of the tallying regulation for a conference of the examining physicians to discuss the evaluation of Horowitz and to resolve differences of opinion, of which there were many. Such a group discussion, as required by the regulation might well have benefited Horowitz by resulting in a consensus that she be given some additional time to acquire those skills in which she was deemed deficient. The failure of the Medical School to carry out the announced procedure denied Horowitz the possible benefits of the examining procedure she reasonably could expect as announced and outlined in the regulations of the Medical School. This departure from the Medical School's printed procedures was in itself a denial of due process.

Thus, in two important respects Horowitz was denied the protection ostensibly accorded to students at the Medical School by the institution's own rules and regulations. She was not called in for an interview before the Council on Evaluation and was thus denied her only opportunity for even the semblance of a hearing. In addition, after her clinical skills were reviewed by a panel of examining physicians, the Medical School failed to follow its own procedure for evaluating the results of that review process.

Each of these failures substantially prejudiced the ability of Horowitz to protect her status at the Medical School. The failure of the School in these two respects was especially harmful to her where the regulations of the School did not otherwise provide means for Horowitz to rebut allegations against her or to present her view of factual controversies. Thus, even the extremely minimal procedural protections afforded by the School's own rules, particularly important in light of the paucity of other procedural protections, were denied her.

B. The Medical School Summarily Excluded the "Deceleration" Option.

The dismissal of Horowitz was also arbitrary and capricious in a second major regard. Although several other students at this relatively new Medical School had been "decelerated" in their studies, such an option was not made available to Horowitz. Dean Noback conceded in his testimony that students at the Medical School had been "decelerated" in their progress through the School, a term that means they were given additional time to complete their education and make up courses in which their performance had been unsatisfactory. (App. 118-119, Tr. 213-214) The practical effect of such a deceleration is to extend the stay of such students at the Medical School and the purpose of it is to allow such students to obtain skills they otherwise did not possess. It provides an opportunity for students to obtain clinical skills, master concepts, learn facts, and acquire all the other usual attributes of a medical education. Dr. Marjorie Sirridge testified that not only did this Medical School provide opportunities to students to extend their education, but such opportunities are available in traditional medical schools as well. (App. 80-81, Tr. 66-68) The failure similarly

to provide an opportunity for Horowitz to extend her stay at the Medical School to master those skills or concepts in which she was deemed to be deficient was arbitrary. It was especially arbitrary under these circumstances where the Medical School, having not yet fully detailed its procedures for reviewing the status of students, had effectively precluded students from advancing their positions at a hearing before committees reviewing their status. Thus, where the "deceleration" option could be extended to students, the denial by the Medical School of an opportunity to Horowitz to appear before any of the evaluation committee meetings and present her case and, perhaps, argue the appropriateness of deceleration under the circumstances of her studies, makes the decision to dismiss her all the more arbitrary.

C. The Medical School Arbitrarily Changed Its Standards of Evaluation and Applied Them Ex Post Facto.

The decision to dismiss Horowitz was arbitrary for a third significant reason. The standards by which the performance of Horowitz at the Medical School was measured were altered during the course of her studies. In the Spring of her first year at the Medical School, Horowitz spent two months in the Pediatrics rotation for which she received a "credit" on her transcript immediately upon completion of the course. (App. 12, Stip. 32) In spite of the fact that Horowitz had received credit for completion of the Pediatrics rotation, the Medical School, when considering her dismissal a year after her completion of the Pediatrics rotation, deemed her performance in that course to have been unsatisfactory. (App. 12, Stip. 33) Prior, however, to her dismissal from the Medical School, she had never been provided copies of the evaluation re-

ports concerning Pediatrics. (App. 14, Stip. 40) Thus, Horowitz reasonably thought at the completion of her Pediatrics rotation that her performance had been satisfactory because the School in choosing to signify her completion of the course on her permanent transcript had chosen the notation "credit" from among three possible notations, credit, no-credit, and incomplete. Although her docent and the Dean at some point in time learned that her performance in Pediatrics was being held against her in the consideration of her dismissal from the Medical School, she was never informed that her performance was unsatisfactory and, therefore, she did not have an opportunity to seek permission to repeat the rotation even though such permission might well have been granted. (App. 111-112, Tr. 187-188) Even her docent did not know that Horowitz's performance in Pediatrics was deemed unsatisfactory. (Tr. 112) The failure to advise Horowitz that her "credit" in Pediatrics was being used in part to justify her dismissal and thus preventing her from seeking permission to repeat the rotation was especially damaging to her because the Medical School does not specify requirements for graduation in terms of successful completion of any number of courses, nor does the Medical School specify non-graduation for failure to complete a course or courses successfully (App. 25, Stip. 92), and Horowitz completed all of her courses. (App. 25, Stip. 86)

The practical effect of giving Horowitz credit for completing the Pediatrics course and then holding her performance in that course against her was to impose, ex post facto, a significant change in the standards of evaluation applied to Horowitz without giving her an opportunity to correct any deficiencies revealed by the more stringent standard adopted. Thus the ex post facto imposition of a new standard of review was arbitrary and capricious

and worked to the substantial detriment of Horowitz when her status at the Medical School was reviewed, without notice to her, in May, 1973.

Similarly, in the Spring of her final year at the Medical School, Horowitz participated in a Surgery rotation and in an Obstetrics-Gynecology rotation and her performance in those rotations was deemed to have been satisfactory. (Tr. 431-433) In spite of her satisfactory performance in these rotations Dean Noback testified that in making the decision to dismiss her from the Medical School these two rotations had "impacted negatively" upon her status at the Medical School. (Tr. 431-433) Again, Horowitz was subject, to her detriment, to a changing standard of evaluation. Whereas her performance in these two rotations had been deemed satisfactory at the completion of each course they were later utilized by the Medical School as evidence supporting her dismissal because they had not been satisfactory enough.

Such an alteration in the standards by which her performance was measured resulted in an arbitrary and capricious decision to dismiss her. Horowitz was entitled to rely upon her expectancy that the Medical School would not change the standards by which her performance was evaluated without notice to her. She was entitled to rely upon her expectation that new standards of evaluation would not be retroactively applied to her. The changes in evaluation adopted by the Medical School thus deprived Horowitz of a property interest in the completion of her education without arbitrary alterations in policy. Where the changes in policy resulted in the dismissal of Horowitz from the Medical School, she was denied due process of law where no opportunity for a hearing was provided. *Perry* v. *Sindermann*, 408 U.S. 593 (1972).

D. The Dismissal of Horowitz Was Especially Arbitrary and Capricious.

The dismissal of Horowitz from the Medical School is made all the more egregious when the failure to provide her notice and an opportunity for a hearing, failure to allow her the "deceleration" option, failure to accept the judgment of a majority of the seven examining physicians, and the application of shifting standards to the evaluation of her performance in her courses are viewed in context of the total experience of Horowitz at the Medical School.

The Medical School was established in 1971 as an experimental school designed to educate students to become "safe" physicians who had an orientation to the delivery of primary health care, either as family physicians, general practitioners, or clinicians. It was further hoped that the Medical School would produce physicians to deliver medical care where it was most needed, in rural areas and in heavily populated urban centers. In spite of this conscious design to produce primary care oriented physicians, Horowitz was admitted as an advanced standing student with an expressed interest in research and a disinclination for concentration on "clinical instruction." (P.Ex. 10, Tr. 223) One of the two interviewers who met with Horowitz before her admission to the Medical School rated her good, very good, or excellent in all categories with the exception of personal appearance which was noted to be unsatisfactory. The interviewer wrote at the bottom of the interview sheet the following:

> The candidates (sic) personal appearance is against her—her interests in medicine are psychiatry—wants to teach in a med school—she has a slight speech impediment—I don't believe she fits our program.

(P.Ex. 15, Tr. 74). See photographs of Horowitz, P.Exs. 111, 112 and 113 at Tr. 30. In spite of the knowledge of at least some persons at the Medical School of the inappropriateness of Horowitz for the clinically oriented structure of the Medical School, she was admitted nevertheless. Her docent, Dr. William Sirridge, testified that if he had known of this interview report, Horowitz would not have been admitted to the Medical School. (App. 110, Tr. 172)

Dr. Marjorie Sirridge testified that the physical appearance of Horowitz was a drawback to her at the Medical School in that it interfered with her clinical practice of medicine even though it was not an appropriate standard by which to measure a "safe" physician. (App. 83-84, Tr. 74-75) Horowitz's docent, Dr. William Sirridge, testified that to a certain extent the observation that Horowitz had become a class joke was correct and that in part this difficulty may have been caused by her physical appearance. (App. 98-99, Tr. 104-105) Dr. Dennis testified that Horowitz was overweight, unattractive, unkempt, but not uncleanly, had a speech impediment, and was the joke of the Medical School (App. 169-170, Dennis Depo. 7-10) in spite of her outstanding academic achievements. For these reasons a considerable amount of ill will was generated against her, among those students and a few faculty members, some of whom were in positions to influence her dismissal. (App. 169-173 and Dennis Depo. 22-27)

The physical appearance of Horowitz also resulted in the application of evaluation standards to her performance that were more stringent than applied to male students. Dr. Marjorie Sirridge, a professor at the Medical School and a member of the Coordinating Committee, testified that Horowitz was disadvantaged at the Medical School

by her appearance because she did not exemplify what was expected of female medical students (App. 81-82, Tr. 69-70) and because of an unattractive physical appearance and a speech impediment or heavy accent. (App. 83, Tr. 73-74) Dr. Sirridge testified that Horowitz's physical appearance was a drawback to her at the Medical School and interfered with the clinical practice of medicine even though appearance was not an appropriate standard to measure the competence of a physician. (App. 83-84, Tr. 74-77)

Dr. William Sirridge, Horowitz's docent, testified that Horowitz was disadvantaged at the Medical School by her appearance and her sex. (App. 106-107, Tr. 132) Similarly, witnesses Dr. Mary Howell, Associate Dean of Harvard Medical School, and Dr. Helene Guttman testified that Horowitz had been prejudiced by her sex. (App. 175-180, 136-139)

Thus it appears that in spite of her excellent academic and scholastic achievements, it became apparent to the Medical School that Horowitz had neither the requisite personality nor appropriate physical appearance to be a "safe physician" in the mold in which the school was casting its students. Indeed, it was stated the third month of her medical education by a member of the Evaluation Council that Horowitz did not have the charisma to be a physician. (Dennis Depo. 23-24) Once a determination had been made that she was not appropriate, her dismissal became a certainty and she was dismissed notwithstanding some procedural niceties. These included the problems created by such facts as the continued recommendations of her docent that she graduate (App. 107) or the credit she had earned in rotations, or the majority judgment of the seven examining physicians that she either graduate or be continued on probation. When viewed in this context the

Medical School, by not allowing her the option of "deceleration", by not giving weight to the judgment of the examining physicians, and by imposing upon her shifting standards of evaluation, acted arbitrarily and capriciously when it dismissed Horowitz.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed or the Writ of Certiorari herein should be dismissed as having been improvidently granted. In the alternative, if the decision of the Court of Appeals is reversed, this cause should be remanded to the Court of Appeals for consideration of the substantive due process issues raised by Respondent.

Respectfully submitted,

ARTHUR A. BENSON II
2525 Commerce Tower
911 Main Street
Kansas City, Missouri 64105
816/842-7603
Attorney for Respondent

Counsel for Respondent gratefully acknowledges the assistance of Alan P. Sherbrooke and his fellow students at Harvard Law School in preparation of portions of this Brief.

FOR ARGUMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-695

BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI, *et al.*,

Petitioners,

—v.—

CHARLOTTE HOROWITZ,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION, THE ASSOCIATION FOR WOMEN IN SCIENCE, AND THE WOMEN'S EQUITY ACTION LEAGUE EDUCATIONAL AND LEGAL DEFENSE FUND, FOR LEAVE TO FILE BRIEF *AMICI CURIAE*; BRIEF *AMICI CURIAE*

JOEL M. GORA
American Civil Liberties Union
22 East 40th Street
New York, New York 10016
Attorney for Amici Curiae

ELLEN DRESSELHUIS
c/o Women's Equity Action League
Educational and Legal Defense Fund
733 15th Street, N.W.
Washington, D.C. 20005
Of Counsel

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In The
SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 76-695

BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI, et al.,
Petitioners,

v.

CHARLOTTE HOROWITZ,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION, THE ASSOCIATION FOR WOMEN IN SCIENCE, AND THE WOMEN'S EQUITY ACTION LEAGUE EDUCATIONAL AND LEGAL DEFENSE FUND, FOR LEAVE TO FILE BRIEF AMICI CURIAE

The American Civil Liberties Union, the Association for Women in Science, and the Women's Equity Action League Educational and Legal Defense Fund respectfully move, pursuant to Rule 42 of this Court's Rules, for leave to file the within brief amici curiae. Counsel for the respondent has consented to the filing of this brief;

counsel for the petitioners have refused consent. */

The American Civil Liberties Union is a nationwide, non-partisan organization of over 250,000 members, dedicated solely to defending the safeguards of the Bill of Rights. The ACLU believes, with Mr. Justice Douglas, that "[i]t is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference berween rule by law and rule by whim or caprice." Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 179 (1951). Because of this belief, the ACLU has participated in hundreds of cases involving the due process rights of students, teachers, and governmental employees, in this and other courts.

The Association for Women in Science is a national organization dedicated to promoting equal opportunities for women to enter the professions and to achieve their career goals. A growing awareness of the magnitude of sex discrimination in the professions and personal experiences of unequal opportunities led the founders to form the organization in 1971. The Association affirms the intrinsic

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*/ A copy of the letter from respondent is being lodged with the Clerk.

ability of women to function as professional scientists at a level of competence equal to that of men. The Association is composed of women in the physical, biological, social, medical, nursing, dental and veterinary sciences, teachers of science and engineering, and men who support the aims of the Association.

The Women's Equity Action League Educational and Legal Defense Fund is a non-profit, tax exempt association organized to provide legal assistance and services to insure full participation and recognition of individuals in all facets of American life without discrimination based on sex. The Fund has a history of supporting fair treatment of women in the medical profession.

The issues in this case involve important questions concerning whether due process protection should be afforded to a woman medical student expelled from school on the eve of graduation for reasons of personal conduct. We would hope that our analysis of those issues will be of assistance to the Court in resolving the questions before it. And it is in order to present that analysis that amici respectfully move for leave to file this brief.

Respectfully submitted,

JOEL M. GORA
American Civil Liberties
Union Foundation
22 East 40th Street
New York, New York 10016

Attorney for Amici Curiae

August 8, 1977

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1977

No. 76-695

BOARD OF CURATORS OF THE
UNIVERSITY OF MISSOURI, et al.,
Petitioners,

v.

CHARLOTTE HOROWITZ,
Respondent.

On Writ of Certiorari to the
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BRIEF OF THE AMERICAN CIVIL LIBERITES UNION, THE ASSOCIATION FOR WOMEN IN SCIENCE, AND THE WOMEN'S EQUITY ACTION LEAGUE EDUCATIONAL AND LEGAL DEFENSE FUND, AMICI CURIAE

Interest of Amici Curiae

The interest of amici curiae is set out in the motion preceding this brief.

STATEMENT OF THE CASE

The respondent, Charlotte Horowitz, was expelled from the University of Missouri-Kansas City School of Medicine in July, 1973, a decision which, as the Court of Appeals found, effectively forecloses her from a medical career. (A. 53-54).*/ At no time was she afforded a hearing or the opportunity to appear before the school authorities who expelled her, and at no time during the dismissal procedure was she allowed to confront the evidence against her. (A. 53). It is in this context that the Court is being asked to decide important issues under the Fourteenth Amendment. But those issues do not turn on whether the decision to dismiss the respondent from medical school was proper; they turn instead on whether that decision should have been buffered by due process safeguards. The facts relevant to determining that issue are as follows.

Charlotte Horowitz entered UMKC Medical School as an advanced standing student in 1971. She entered with superior test scores and recommendations, as well as five years of study and work in psychopharmacology at the National Institute of Health in Bethesda, Maryland. (A. 48-49).

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*/ "A._____" refers to the Appendix filed with the Court.

During her first year, Horowitz received credit for all courses taken, and her performance was felt to be outstanding by her docent, the supervising faculty member in closest contact with her. (A. 50). However, faculty members in one of her courses, "criticized her lack of patient rapport and 'expertise in coming to the fundamentals of the clinical problem,' erratic attendance, and poor personal hygiene." (A. 50). Horowitz was informed of these criticisms by her docent, without being shown the formal course evaluation. (A. 50).

In a letter dated July 5, 1972, the Dean told Horowitz that, although she was being advanced to her final year, she was on probation because of deficiences in her conduct and appearance. He noted that she had to improve her relationships with other by "keeping to established schedules; meeting all clinical responsibilities on time and gracefully; attending carefully to personal appearance, including hand washing and grooming; participating appropriately in the activities of the School; and directing criticisms and suggestions maturely to [faculty members] ...." (A. 50-51). The letter also indicated that failure to meet certain standards of conduct "is incompatible with continued progress and graduation." (A. 51).

In December of that year, the Council on Evaluation recommended that Horowitz not graduate on schedule in June, 1973. The Coordinating Committee approved this recommendation, followed by the Dean. (A.51).

In a letter dated February 7, 1973, the Dean informed Horowitz that she had failed to improve in the areas noted in the July 5, 1972, letter and would not graduate in June. He advised her that absent marked improvement in "clinical competence, peer and patient relations, personal hygiene and ability to accept criticism," she would be expelled from the medical school after May. (A. 51-52).

Although no procedures had been specified, Horowitz was told she could "appeal" the decision that she would not graduate in June by taking a set of oral and practical examinations, pursuant to regulations promulgated in November, 1972. (A. 52). This was the first time such examinations had been administered. The Dean established procedures to be followed for tallying a majority opinion of the examiners to be submitted to the Council on Evaluation, or for calling together the panel if there were no clear majority. But these procedures ultimately were not followed, because even though there was no clear majority opinion, the panel was not convened. (A. 52). Instead, the individual recommendations were submitted to the Council on Evaluation. On May 1, 1973, the Council reaffirmed its view that Horowitz should not be allowed to graduate in June, a decision approved by the Coordinating Committee and the Dean. (A. 53).

On May 28, 1972, the Council on Evaluation further recommended that Ms. Horowitz be expelled. As the Eighth Circuit noted, "the appeal procedure...related only to the decision not to graduate Horowitz, and not to the decision to expel her." (A. 55). That decision was also approved by the Coordinating Committee. On July 3, 1973, the Dean notified the respondent that she was no longer a student, and the University Provost for the Health Sciences denied her request for a reversal of this decision.

The stated reason for her expulsion was failure to improve in four areas described in the Dean's July 5, 1972 letter: "clinical competence, peer and patient relations, personal hygiene and ability to accept criticism." (A. 232). As the Council on Evaluation had noted previously in its December 25, 1972 meeting, "This issue is not one of academic achievement, but of performance, relationship to people and ability to communicate." (A. 218). Indeed, throughout her career at UMKC Medical School, Horowitz's academic performance provided absolutely no basis for the dismissal. She received credit in every course except one, which she did not complete until after it was determined that she would not graduate. (A. 49).

Because of her expulsion, Horowitz was unable to accept employment which had been offered her at the University of North Carolina, because it was conditioned upon her obtaining her medical degree. (A. 53-

54). The Eighth Circuit noted that it was "uncontroverted that Horowitz's dismissal from medical school will make it difficult or impossible for her to obtain employment in any medically related field or enter another medical school." (A. 53-54). She has thus been effectively foreclosed from pursing a medical career.

SUMMARY OF ARGUMENT

The petitioners have suggested that the decision below involves an intolerable kind of judicial interference in matters of academic judgment and expertise. It does not. The issue in this case is not whether Ms. Horowitz is qualified to receive a medical degree. Rather the issue is whether the petitioners' determination that she is not so qualified should be subject to due process safeguards. In the context of this case, the answer to that question must be in the affirmative.

I.

The actions taken by the petitioners against Ms. Horowitz - dismissing her from medical school, stigmatizing her in the process of doing so, and thereby effectively foreclosing to her any opportunity to pursue employment in her chosen field of endeavor - invaded interests protected by the Fourteenth Amendment. Wisconsin v. Constantineau, 400 U.S. 433 (1971); Goss v. Lopez, 419 U.S. 565 (1975); Schware v. Board of Bar Examiners, 353 U.S. 232 (1957). The state officials have done far more than just defaming the respondent; they have stigmatized her plus depriving her of the ability to pursue a profession. See Paul v. Davis, 424 U.S. 693 (1976). In these circumstances, due process was required.

II.

In order to determine what process was due the respondent, the Court must take into account the substantial harm done to Ms. Horowitz, the fact that the underlying issues are amenable to resolution through a hearing process, and the total lack of any substantial state interest in summary adjudication of those issues. Goldberg v. Kelly, 397 U.S. 254 (1970); Morrissey v. Brewer, 408 U.S. 471 (1972); Goss v. Lopez, supra. The question of whether Ms. Horowitz should remain in medical school is an important one - for the University, no less than for the respondent - and one which should be buffered by the due process safeguards of a university hearing at which the charges can be fully and fairly heard.

III.

This traditional due process analysis should not be displaced because it arises in an academic setting. Affording due process to Ms. Horowitz does not mean that the judiciary will be embroiled in disputes over examination grades. The charges against Ms. Horowitz basically involve the kinds of factually verifiable allegations of misconduct that are traditionally tested through fair procedures. E.g., Goss v. Lopez, supra, Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961). And the relief she seeks does not require the Court to

second-guess academic personnel, but only to decide whether the Constitution requires those academic personnel to give Ms. Horowitz a hearing.

ARGUMENT

I. THE ACTIONS TAKEN AGAINST THE RESPONDENT INVADED INTERESTS PROTECTED BY THE FOURTEENTH AMENDMENT.

The petitioners have deprived the respondent of interests cognizable under the Fourteenth Amendment by dismissing her from their medical school, stigmatizing her in the process of doing so, and thereby foreclosing to her any opportunity to take advantage of employment opportunities in medicine fields.

Petitioners have expelled respondent from medical school upon charges of deficiencies in "clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism." These are not confidential charges that would never have become public knowledge if not for this litigation. Cf., Bishop v. Wood, 426 U.S. 341 (1976). The Eighth Circuit noted that "UMKC's own application forms require that a student fully explain the reasons they were required to leave 'any college, graduate or professional school...because of deficiencies in either conduct or scholarship.'" (A. 54). Thus, quite apart from this litigation, the charges and actions against the respondent still would have reached medical schools considering her. Indeed, the Court below found it to be "uncontroverted that Horowitz's dismissal from medical school will make it difficult or impossible for her to obtain employment

in a medically related field or to enter another medical school." (A. 53-54). */

It is thus clear that the petitioners have harmed respondent's good name and professional reputation by expelling her from medical school for the reasons cited above. In addition to their charge of clinical incompetence, they have labelled her a person who has unsatisfactory relations with peers and with patients, one who is physically unclean and unkempt, and one who is unable to accept criticism. In sum, they have taken punitive action against her and in the process they have condemned her proficiencies, her personality, and her appearance, thereby imposing a "badge of disgrace" upon her. Wisconsin v. Constantineau, 400 U.S. 433, 436 (1971).

In Paul v. Davis, 424 U.S. 693 (1976), the court made it clear that the state infringes a liberty interest protected by

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*/ Similarly, the court in Wellner v. Minnesota State Junior College Board, 487 F.2d 153 (8th Cir. 1973) affirmed that a college's failure to reappoint a nontenured teacher, when taken together with the inclusion in his file of charges that he was a racist, where prospective employers would have likely access to that information, infringed a liberty interest such that a hearing was necessary.

the Fourteenth Amendment when it stigmatizes an individual so as to alter his legal status by depriving him of a right previously held. Here, unlike in Davis, we do not merely have defamation by a state official, without more. Petitioners' stigmatization of respondent has deprived her of both the right to pursue a medical degree and the right to take advantage of opportunities for employment in her field of endeavor.*/ In Paul v. Davis, in holding that defamatory action by the state, without more, does not deprive the individual of "liberty," the Court also made clear that when the imposition of such stigma is coupled with adverse governmental action, for example, depriving a person of the opportunity to buy a drink, Wisconsin v. Constantineau, supra, to continue teaching at a university, Board of Regents v. Roth, 408 U.S. 564 (1972), or to continue being a student, Goss v. Lopez, 419 U.S. 565 (1975), then Fourteenth Amendment interests are very much involved. In this

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*/ It should be noted that respondent's opportunity to work in the medical field, available to her prior to her expulsion, has been effectively extinguished. Before entering medical school, Ms. Horowitz worked for five years in a medically-related job at the National Institute of Health at Bethesda, Maryland. The Eighth Circuit noted that she is now foreclosed not only from work as a medical doctor, but also from work in a medically-related field.

case there is clearly "stigma plus," since Ms. Horowitz was stigmatized by the state as part of the process of expulsion from medical school thus foreclosing employment opportunities. It follows that petitioners have invaded interests protected by the Fourteenth Amendment.

This conclusion is reinforced by the fact that the respondent's ability to obtain a medical degree derives from the fact that the degree is an eligibility requirement for attaining the status of a physician. By making it practically impossible for respondent to obtain the degree, petitioners have rendered her ineligible for employment in the capacity of a physician and in other medical capacities that require such a degree. The ability to establish one's eligibility for a benefit is protected as a liberty interest in numerous contexts. Board of Regents v. Roth, 408 U.S. 564, 577 (1972), citing Goldberg v. Kelly, 397 U.S. 254 (1969). "The Court has held...that a State, in regulating eligibility for a type of professional employment, cannot foreclose a range of opportunities 'in a manner...that contravene[s]...Due Process,' Schware v. Board of Bar Examiners, 353 U.S. 232, 238, ..." (1957). Board of Regents v. Roth, supra, 408 U.S. at 574. As a prerequisite to the practice of certain medical careers a medical degree is like a license. A state cannot deny a person a license to practice his chosen profession absent procedural due process. Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963); Goldsmith v. United States Board of Tax Appeals, 270

U.S. 117 (1926).

As to respondent's right to take advantage of employment opportunities in her field of endeavor, the opinions of this Court have established that when the state denies an individual "the right to engage in any of the common occupations of life..." then the state infringes upon a liberty interest which is protected by the Fourteenth Amendment. Roth, supra, at 572, quoting Meyer v. Nebraska, 262 U.S. 390, 399 (1923). See Bishop v. Wood, supra. Petitioners have denied Horowitz the right to work as a physician and in all probability she now is foreclosed from any medically-related career. Horowitz v. Board of Curators of the University of Missouri, 538 F.2d 1317, 1320 (8th Cir. 1976). It is certain that, unlike the original plaintiffs in Bishop, supra, and Roth, supra, Horowitz does not "remain[ ] as free as before to seek another" medical school position or job in her field. Bishop v. Wood, supra, 426 U.S. at 348, quoting Board of Regents v. Roth, 408 U.S. 564, 575 (1972).

In Goss v. Lopez, supra, the court based its holding, that students suspended from public school in Ohio were thereby deprived of liberty within the meaning of the Fourteenth Amendment, upon the anticipation that "If sustained and recorded, those charges [underlying suspension] could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher

education and employment." 419 U.S. at 575. The court noted that students would be asked to disclose their suspensions on college applications. Id. n. 7. The consequences the Court feared in Goss have befallen Horowitz. The state has stigmatized her to the point that she is foreclosed from completing medical school, obtaining her medical degree, and working as a physician or in any medically-related field.

In a virtually identical case, Greenhill v. Bailey, 519 F.2d 5, 7, 8 (8th Cir. 1975), the court held that in communicating to another organization that it had expelled a medical student for "lack of intellectual ability or insufficient preparation" the state had "deprived [the student] of a significant interest in liberty, for it admittedly 'imposed on him a stigma or other disability that foreclose[s] his freedom to take advantage of other opportunities.' Board of Regents v. Roth, supra, 408 U.S. at 573..." In the instant case, petitioners' charges against respondent denigrate her clinical proficiencies, personality, appearance, personal habits and "ability to accept criticism." (Appendix, e.g., 221)(emphasis supplied).

In short, the petitioners derogatorily labelled the respondent as incapable of obtaining a medical degree, expelled her from medical school, and thereby effectively precluded her from pursuing a professional career in the medical field. If these actions by agents of the State are not deemed to

infringe interests protected by the Fourteenth Amendment, then it is hard to imagine any form of adverse State action - short of incarceration - that would.

II. RESPONDENT DID NOT RECEIVE THE PROCESS THAT WAS "DUE" IN THE CIRCUMSTANCES OF THIS CASE.

"'Once it is determined that due process applies, the question remains what process is due.'" Goss v. Lopez, supra, 419 U.S. at 577, quoting Morissey v. Brewer, 408 U.S. 471, 481 (1972). The process due in this case is adequate notice of the charges and a meaningful hearing thereon. Respondent was entitled to a hearing because she had a substantial interest in avoiding an unfair or mistaken dismissal from medical school, her dismissal rested on factual grounds as to which there is disagreement and whose character can be colored by a witness' point of view, and the petitioners can claim no significant interest in expelling her without a hearing. Given these circumstances, a hearing is a constitutionally indispensable tool for arriving at a fair and correct determination.

The petitioners claim that the respondent received all the process that was due and that she was "treated with fairness" (Pet. Br., p. 25). In making that argument, they contend that since the governmental function at issue "is that of educating

future medical doctors of this nation and the awesome responsibility to the general public of graduating only those individuals who are safe and competent physicians" (Pet. Br., p. 25), the nature of the process that is due must be tailored accordingly. The respondents, however, misconceive the kinds of interests to be weighed and are asking the Court to balance the wrong factors. The determination of what process is due involves balancing the interest of the government in summary adjudication against the interest of the individual in not being deprived of the "liberty" or "property" interests in question. "The extent to which procedural due process must be afforded the [welfare] recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss'...and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication." Goldberg v. Kelly, 397 U.S. 254, 263 (1970); Morrissey v. Brewer, supra, 408 U.S. at 481-84. Here, the respondent has been "condemned to suffer grievous loss" and the state's interests, though weighty, do not require summary adjudication to be vindicated. The fact that the state's interest in graduating competent doctors is weighty is beside the point. The question is whether requiring a hearing for the respondent will jeopardize that interest. We submit that it will not.

"'[T]he fundamental requisite of due process of law is the opportunity to be heard'..." Goss v. Lopez, supra, 419

U.S. at 579. "[T]he nature of the hearing will depend on appropriate accomodation of the competing interests involved," in light of the risk of an erroneous deprivation under the current procedures and the utility of additional procedural safeguards for reducing that risk. Id. at 579-580; Mathews v. Eldridge, 424 U.S. 319 (1976).

Respondent's interest is that of the students in Goss, namely, "to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences." 419 U.S. at 579. It is logical to assume that petitioners share with the Ohio public schools in Goss an interest in conserving financial and administrative resources and in avoiding interference with the educational process as well as in avoiding unwarranted student dismissal. */

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*/ As students progress through medical school, the institution invests in them in a myriad of ways. The school develops an obvious interest in seeing those students complete their medical education, contribute to the field of medicine, and bring credit to what is in petitioners' case a relatively young school. The school also has a stake in seeing that students adopt values suitable to their future positions of responsibility and which reflect well on the school. Thus, the school has an interest in seeing that dismissals are neither mistaken nor unfair.

In analyzing the possibility of unfair or mistaken dismissal in Goss, the Court considered the fact that those in authority to suspend students "frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed." 419 U.S. at 580. Similarly, in the case at bar, the Council on Evaluation based its recommendation for dismissal upon the reports and advice of others as contained, for example, in docents' recommendations (See A. 115-117). Through the Council's Minutes the information was communicated to the Coordinating Committee for final action (A. 79-80). Also, the record documents disagreement on facts fundamental to the charges which constituted the grounds for respondent's dismissal. (Compare, e.g., A. 68-69 with A. 156). The Court's depiction of the factors under consideration in Goss therefore applies here as well.

"Central to the evaluation of any administrative process is the nature of the relevant inquiry." Mathews v. Eldridge, supra, 424 U.S. at 343. A charge such as poor p -sonal hygiene, unsatisfactory relations with peers or inability to accept criticism "depends upon a collection of the facts...easily colored by the point of view of the witnesses." Dixon v. Alabama State Board of Education, 294 F.2d 150, 159 (5th Cir. 1961). There is no "assurance of rightness" in an administrative determination of inability to accept criticism, where the accused individual has no opportunity to relate her side of the encounter or encount-

ers in question. Goss v. Lopez, supra, 419 U.S. at 580.

It is obvious that there is a substantial probability of mistake and unfairness in dismissing a student without a hearing in a case such as the one at bar. "[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights..." Id. at 580. In the instant case, as in Goss, a hearing is capable of reducing the risk of mistaken or unfair expulsion, by allowing the decision-making authorities to work from a complete account of the facts and by affording "the student...the opportunity to characterize [her] conduct and put it in what [s]he deems the proper context." Id. at 584; see also Morrissey v. Brewer, supra, 408 U.S. at 484. Faced with the same comparative weight of student and school interests, and a situation in which a hearing similarly promised to reduce an otherwise significant risk of unfair or mistaken student dismissal, the Goss Court concluded that due process mandated that the student receive notice and an opportunity to be heard. Due process demands no less here.

Because subjective accounts of the controlling facts are at issue, the hearing mandated in the instant case should, at the very least, take place before the official body making the relevant findings of fact and determining the action to be taken. See Goss v. Lopez, supra. Ms.Horowitz's conferences with the Dean and other individual

school administrators do not satisfy the due process hearing requirement. As the court said in Esteban v. Central Missouri State College, 277 F.Supp. 649, 651 (W.D. Mo. 1967):

> ... the critical defect in the hearing procedure used by the college was the fact that the person to whom the students were permitted to make their explanation or showing...was only one of a number of persons on the board which made the recommendation of suspension. It is imperative that the students charged be given an opportunity to present their version of the case and to make such showing as they desire to the person or group of persons who have the authorized responsibility of determining the facts of the case and the nature of the action, if any, to be taken.

The Eighth Circuit later noted with approval the District Court's handling of the procedural due process questions in the case. Esteban v. Central Missouri State College, 415 F.2d 1077, 1089 (8th Cir. 1969).

Finally, we would note that the court below went only so far as to declare Horowitz's dismissal without a hearing to be in violation of the Fourteenth Amendment, and to declare that she should be "accorded all other procedural due process rights." The court did not specify whether due process

mandated a hearing before dismissal. However, we would submit that the hearing mandated in the present case should occur prior to expulsion because the state has no significant interest in summary dismissal, while the student has a substantial and overriding interest in avoiding that. See Goldberg v. Kelly, supra, 397 U.S. at 262-3. After an extended period during which there were numerous deliberations of the authorities before whom Horowitz should have had a hearing, petitioners can hardly be heard to protest the necessity of dismissal before rather than after a hearing. Cf., Mathews v. Eldridge, 424 U.S. 319 (1976). Moreover, the respondent has an obvious interest in avoiding an interruption in studies that could jeopardize a semester or lengthen her schooling, as well as an interest in avoiding a compelled absence from school which may have to be explained subsequently to other schools or employers. In such a case, due process requires a hearing prior to the adverse governmental action.

III. THE PARTICULAR CONTEXT OF THIS CASE DOES NOT JUSTIFY A DEPARTURE FROM TRADITIONAL DUE PROCESS ANALYSIS OR A DENIAL OF DUE PROCESS PROTECTION.

We think it clear that the traditional due process analysis set forth above requires the conclusion that the University officials deprived Ms. Horowitz of due process of law in taking the actions against her in the

manner that they did. Running throughout the petitioners' attempt to refute this traditional analysis is the general theme that there should be no judicial interference with academic decision-making where students are concerned. The impression is sought to be created that if due process is accorded to Ms. Horowitz, judges throughout the country will spend their time grading examination papers of students from kindergarten through medical school. Resolution of the issues in favor of the respondent will have no such effect.

The issue in this case is not whether Ms. Horowitz is qualified or competent to be a doctor. Rather, the issue is whether the University's decision that she is not, under the circumstances here, should have been surrounded by due process safeguards. For the following reasons, an affirmative answer to that question will not inevitably lead to the kind of ongoing interference with academic responsibility which the petitioners suggest.

A. The charges against respondent are primarily based on personal misconduct, not academic performance.

It is settled that where the state attempts to dismiss a student from a tax-supported school or institution of higher learning upon charges of misconduct, the state must accord the student some form of procedural due process. Goss v. Lopez, supra; Dixon v. Alabama State Board of

Education, supra. Since the petitioners expelled Horowitz from medical school largely on charges of misconduct, this principle is applicable and the procedural mandates of due process were required.

A review of the reasons for the dismissal demonstrates that Horowitz was expelled chiefly on account of misconduct. As the Eighth Circuit indicated, "[h]er academic (as opposed to practical) performance certainly gave no cause for complaint." (A. 49-50). She was expelled because the authorities empowered to take that action found fault with her "clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism."

Lower courts have grappled with the issue of what constitutes "misconduct" for the purpose of determining the application of due process safeguards. For example, in Brookins v. Bonnell, 362 F.Supp. 379, 382 (E.D. Pa. 1973), the court held that where the reasons for dismissal relate primarily to a failure to conform to school regulations, such matters are not "academic" for constitutional purposes and the due process required in misconduct cases must be afforded. The court reasoned that misconduct is characterized by the fact that its determination rests on questions of fact whose resolution requires no "reference...to a standard of achievement in an esoteric academic field." Id. at 383. The reasons cited for Horowitz's expulsion rest on disputed issues of fact to which

scholastic standards and expertise are largely irrelevant. These issues include whether Horowitz met clinical responsibilities on time and "gracefully" (A. 51); in the realm of peer relations, whether her physical appearance, a slight speech impediment, and a limited wardrobe were such that they subjected her to group derision (A. 168-173); whether her fingernails were dirty (A. 156); and how she responded when faced with criticism (A. 51).

Only Horowitz's alleged clinical deficiencies present an arguably academic reason for her dismissal, inasmuch as a medical student's clinical behavior may be judged by standards peculiarly relevant to physicians. But the primary basis for Horowitz's dismissal does not involve such academic matters, but relates instead to matters of personal appearance and deportment. Therefore, since the essence of the dismissal was based upon charges of misconduct, the mandates of procedural due process should apply. Cf., Gaspar v. Bruton, 513 F.2d 843 (10th Cir. 1975).

B. Even if the grounds for the dismissal are characterized as primarily "academic," the nature of the relief sought will not require improper judicial interference in academic matters.

Some lower courts have refused to subject "academic" dismissals to due process scrutiny on the ground that courts should

not re-evaluate a student's academic performance, or on the ground that such dismissals present issues of such a nature that requiring a due process hearing would be futile. But the respondent here does not ask the Court to re-evaluate her academic performance. She does, however, ask for a hearing, and the questions presented by the charges against her are amenable to resolution in such a hearing. There are many spheres in which the Court has ruled that the procedural safeguards of due process apply, without interfering with or determining the specific evaluations to be made through the process required. The reasons for judicial refusal to re-evaluate a student's adademic performance do not justify a refusal to scrutinize the process by which that performance is judged.

In Greenhill v. Bailey, 519 F.2d 5 (8th Cir. 1975), the Eighth Circuit found that the procedural mandates of the due process clause apply to the expulsion from medical school of a student who failed two courses:

> It is true that courts will ordinarily defer to the broad discretion vested in public school officials and will rarely review an educational institution's evaluation of the academic performance of its students. Notwithstanding this customary "hands-off" policy, judicial intervention in school affairs regularly occurs when a state educational institution

> acts to deprive an individual of a significant interest in either liberty or property. It is well established that when such a deprivation occurs the procedural safeguards embodied in the Fourteenth Amendment are called into play, and courts will not hesitate to require that the affected individual be accorded such protection.
> Id. at 7 (citations omitted).

See also, Gaspar v. Bruton, supra. */

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*/ In Mahavongsanan v. Hall, 529 F.2d 448 (5th Cir. 1976), however, the Fifth Circuit held that notice and a hearing are not required when a student is dismissed for acadmic reasons. In doing so, the Court improperly relied on two earlier Fifth Circuit cases. Dixon v. Alabama State Board of Education, supra, and Wright v. Texas Southern University, 392 F.2d 728 (5th Cir. 1968). Wright did not even consider a procedural due process claim brought by those students in the case who were dismissed for academic failure. Dixon addressed academic dismissals only with regard to the form of process required in dismissals for misconduct and then only by way of contrast. The Dixon court did not indicate that courts could not review the procedures utilized in dismissals for academic reasons.

To be sure, there are many cases where lower courts have stated that they will not engage in a process of re-examining academic evaluations that school officials have made with a goal of overturning those judgments and re-instating the student. See e.g., Connelly v. University of Vermont and State Agricultural College, 244 F.Supp. 156 (D.Vt. 1965); Keys v. Sawyer, 353 F.Supp. 936 (S.D. Tex. 1973). Brookins v. Bonnell, supra; Barnard v. Inhabitants of Shelburne, 216 Mass. 19, 102 N.E. 1095 (1913); Edde v. Columbia University, 8 Misc. 2d 795, 168 N.Y.S. 2d 643 (Sup. Ct. 1957). As the court said in Keys v. Sawyer:

> Federal courts should not interfere or substitute their judgment and authority for that of local and state school authorities unless such action is clearly warranted to protect rights guaranteed by the Constitution... The gravamen of plaintiff's complaints is the basic unfairness of grading systems employed by two individual professors. It is difficult to imagine an area of academic life more suitable for judicial abstention. 353 F.Supp. at 939.

But we do not understand the respondent to quarrel with this principle. Indeed, there are sound reasons for courts generally to decline to redetermine a student's grade or the value of a dissertation. However,

this deference cannot preclude judicial scrutiny of the procedure by which a student is expelled. Such scrutiny calls for constitutional, not academic, expertise and it in no way interferes with instruction.

Procedural scrutiny of Horowitz's expulsion for its conformance to due process requirements does not rperesent an impermissible intrusion into educational affairs. There is ample precedent for this Court to apply the procedural mandates of due process to a sphere of decision-making in which the courts will not intrude to render the decisions themselves. See Bell v. Burson, 402 U.S. 535 (1971); Goldberg v. Kelly, supra. Moreover, the Court has subjected the actions of tax-supported educational institutions to procedural due process scrutiny in the past when such actions infringed protected interests. Goss v. Lopez, supra; Perry v. Sindermann, 408 U.S. 593 (1972). Indeed, it is even established that courts may review academic dismissals for their conformance to the requirements of substantive due process by assessing whether dismissal was arbitrary, capricious or in bad faith. E.g., Mahavongsanan v. Hall, supra; Depperman v. University of Kentucky, 371 F.Supp. 73 (E.D. Ky. 1974); Wong v. Regents of the University of California, 15 Cal. App. 3d 884, 93 Cal.Rptr. 502 (Ct. App. 1971). Accordingly, there is no sound reason why the courts should not subject even a dismissal for academic reasons to procedural due process review when protected interests are infringed, as some

circuits have done. E.g., Gaspar v. Bruton, supra; Greenhill v. Bailey, supra.

In short, the procedural due process ruling that respondent seeks will not result in novel or intrusive interference with the proper functions of academic officials.

CONCLUSION

For the reasons set forth herein, the judgment below should be affirmed.

Respectfully submitted,

JOEL M. GORA
American Civil Liberties Union
22 East 40th Street
New York, New York 10016

Attorney for Amici Curiae*/

Ellen Dresselhuis
c/o Women's Equity Action League
Educational and Legal Defense Fund
733 15th Street, N.W.
Washington, DC 20005

Of Counsel

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